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ABSTRACT

Providing an extensive, factual account of the controversy regarding the sale of a television station in Bloomington, Indiana, this paper presents a description of the legal issues involved, discusses the correspondence between the author and the purchasers of the station, outlines the justification for filing a Petition to Deny the transfer, and analyzes the final outcome of the case. As reported in the paper, the controversy revolved around six major complaints regarding the transfer: the application submitted by the buyer was not a realistic one for the city of Bloomington; there were errors in the Federal Communications Commission (FCC) required "Ascertainment of Community Needs" that biased that ascertainment against Bloomington; the buyers violated provisions of the Communications Act limiting foreign investment; there had been an unauthorized transfer of control of the station; there had been an unauthorized move of the main studios from Bloomington to Indianapolis; and the FCC did not investigate the effects of this transfer upon the local service to Bloomington. The paper discusses how these allegations were factually supported and argued, as well as why, after several months of delay, the author withdrew the Petition to Deny. (MAI)

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Law Division

THE $1.92 LUNCH
or
AN ACADEMIC IN LAWYERLAND: DIRECT INVOLVEMENT AS A PETITIONER TO DENY A TV LICENSE TRANSFER

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PREFACE

This invited paper of the Professional Freedom and Responsibility Committee of the AEJ Law Division is intended to provoke discussion of the participation of scholars in local communications law controversies. It takes the form of an insider's account of one such controversy; the sale -- between July 7, 1977 and July 7, 1978 -- of TV station WTTV, Channel 4, in Bloomington, Indiana from Sarkes Tarzian, Inc. to Teleco Indiana, Inc. The author filed a Petition to Deny the transfer with the Federal Communications Commission (FCC), but then eventually withdrew that petition -- an act which allowed the sale to go through -- after changes were made in the application by the proposed new owners.

The account of the controversy is divided into two main sections. The first is intended as a descriptive account of the legal issues involved in the dispute. So far as possible, this section will be factual and objective. It will also be rather long, for the controversy was complex -- as was the effort to resolve it. In oral presentation, however, this section of the paper will be drastically shortened. Section two consists of commentary on issues raised by this dispute and by the author's involvement in it. It is that section that, hopefully, will provoke discussion at the AEJ convention.

Like any participant's account, this paper should be approached with caution. In some instances it is impossible, because of promises of confidentiality, to report everything. Nothing major is left out, but the exact

contents of some meetings and the names of some advisers during this controversy can not be revealed. It should also be made clear, at the outset, that the author and his former broadcaster adversaries would surely tell this story differently. To Teleco Indiana, Inc. and Sarkes Tarzian, Inc. much of this account will sound like a tired rehash of legal positions with which they disagree. In many instances, however, the controversy ended without a clear resolution of those issues. In future published accounts of this controversy, the author hopes to provide "equal time" -- at least some kind of print "Fairness Doctrine" -- to the other parties to this dispute. In the meantime, this is the author's version -- often opinionated. It is a version that the author, as scholar, can not verify through normal means, for there are good reasons to doubt that the parties to this case would react with normal candor to questions about these events from an author who was a party to the case, and who might be forced to file another Petition to Deny within a year.

This paper, then, runs both a risk of bias and a risk of incompleteness. Hopefully it makes up for those risks in two ways. To the author's knowledge, there is information here about the costs and strategy of a Petition to Deny, and its effects upon a practicing academic, simply not found elsewhere.[1] Second, it is hoped that this account will stimulate Law Division members to decide for themselves whether or not they, too, should become involved in -- or indeed precipitate -- such controversies in their local communities.

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1. One somewhat similar paper, by Professors Lawrence W. Lichty and William B. Blankenburg of the University of Wisconsin, Madison was presented at the 1972 AEJ Convention, summarized in the October, 1972 Chicago Journalism Review and is reprinted as: Lichty, Lawrence W. and William B. Blankenburg, "Challenging a TV license: the Madison Story," Appendix B in Broadcast Monographs #1, Issues in Broadcast Regulation, Don R. LeDuc, ed., Broadcast Education Assn., Wash., D.C., 1974.

SECTION 1: THE LEGAL CONTROVERSY AND ITS RESOLUTION

§1.1...Let's Begin with Lunch

When Sterling Qunilan published his 1974 new journalism account of the WHDH comparative proceeding, The Hundred Million Dollar Lunch, he opened by noting that his "story could begin almost anywhere."[2] So it is with the story of the transfer of WTTV, Bloomington, Indiana from its founder and long-time owner, Sarkes Tarzian, Inc. to new owners, Teleco Indiana, Inc. Unlike the WHDH story which was controversial for years, the actual dispute over the WTTV transfer took place in the relatively compact period of July 1977 through July 1978. The tale could begin on July 7, 1977 when Sarkes Tarzian, Inc. and Teleco, Inc., a newly formed Michigan corporation, entered into an Asset Purchase Agreement for Teleco's purchase of WTTV -- but it could also start earlier. It could start in November, 1949 when WTTV signed on the air as Bloomington's Channel 10, or it could begin in 1947 when Sarkes Tarzian received the FCC construction permit for the station. It could even be said to have begun as far back as 1928 when the Federal Radio Commission, in its first effort to explicate the "public interest, convenience and necessity" clause of the Radio Act, began to hint that local service was an important component of that standard, for in essence it is the meaning of broadcast localism that sparked this controversy.[3]

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2. Qunilan, Sterling, The Hundred Million Dollar Lunch, Chicago: J. Philip O'Hara, Inc., 1974, at p. 3.

3. See generally Statement Made by the Commission on August 23, 1928, Relative to the Public Interest, Convenience or Necessity, 2 FRC Annual Report 166 (1928). The hint comes when the FRC explains that its allocation system will be designed to serve large cities but also small towns so that, in effect, each may have local radio voices.

Practically speaking, this dispute began July 18, 1977 when Broadcasting magazine reported that a...

> New company, Teleco, Inc., Detroit, has purchased ch. 4 WTTV(TV) Indianapolis for $26 million, highest price ever for independent television station.[4]

The announcement surprised the author and engaged his interest. He had lived in Bloomington since 1974 and been continually amazed at how little attention WTTV seemed to play to local affairs. He knew it was legally licensed to Bloomington, not Indianapolis, but that its major news programs originated from Indianapolis studios and that Bloomington stories were rare. In 1975 he had been approached by members of the Indiana Public Interest Research Group who were considering a protest of WTTV's 1976 renewal application based on the theory that it had not adequately served Bloomington. After explaining the difficulties and low probability of success of filing a Petition to Deny against so entrenched a broadcaster as Sarkes Tarzian,[5] the group apparently became discouraged and abandoned their plans. The author, however, kept up a passing interest in what WTTV was doing, mainly out of a sense of intellectual curiosity that such a station could exist without eventually attracting FCC attention.

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4. "In Brief," Broadcasting, July 18, 1977, p. 22.

5. The Commission rarely admits that long-established broadcasters have special advantages when their licenses are challenged, but has recently -- albeit with disclaimers -- gone to great lengths to praise WPIX, New York, as a "pioneer television licensee" with a "long and unblemished record as a licensee since June 15, 1948." WPIX, Inc., 43 RR 2d 278, 310 (1978). With that analysis, the Commission renewed WPIX's license despite a strong challenge from Forum Communications, Inc. To dissenters Fogarty and Brown, however, that preference for "pioneers" and for industry stability confuses "stability and rigor mortis" and violates the Communications Act's principle that "an incumbent licensee has no vested property right in its license by virtue of simple longevity and no reasonable expectation of renewal against a meritorious challenger absent a record of substantial service to its community." Separate Statement of Commissioners Joseph R. Fogarty and Tyrone Brown, id. at 382.

The Broadcasting story almost mandated further inquiry by the author. The main reason was the price -- "$26 million, highest price ever for independent television station?" That much for a station licensed to a community of just around 50,000 persons? Did the buyers know what they had purchsed? If they did, how were they going to run the station? Sarkes Tarzian ran it as he did -- as an Indianapolis oriented station -- because it made economic sense to do so; it was more profitable that way than as a Bloomington operation. Could these buyers afford to pay even minimal attention to Bloomington given the debt most likely associated with a purchase of that size? There was only one way to find out: contact the buyers.

A phone call to WTTV's Bloomington phone number provided the first ominous sign. Nobody there, it seemed, could provide any information on how to reach the purchasers, what their plans might be, or when the transfer application would be submitted to the FCC. It was suggested the author call the "main studios, in Indianapolis." Main studios in Indianapolis? Legally the Bloomington studios should have been the "main studios", but there seemed to be nobody of authority there. Indianapolis, then, it had to be.

A call to Indianapolis reached Mr. Elmer Snow, General Manager of WTTV. Snow explained it would be six to seven weeks before the transfer application would go to the FCC and promised, at that time, to get back in touch. He certainly knew, from that point on, that there was at least one person in Bloomington interested in the sale and in its impact on the station's community of license. Nothing more was heard from WTTV, however, until August 1, 1977 when the author got a phone call from a Mr. Harvey Grace "at WTTV." An attempted return call was unsuccessful -- and expensive; 15 minutes on long distance hold since Grace was in Indianapolis rather

than Bloomington. The next morning, however, Grace called the author at home, identified himself as the President of Teleco, Inc., the purchaser of the station, and as in Bloomington to conduct his FCC required ascertainment of community needs. Grace proposed a meeting to talk about the author's concerns about Bloomington service. It was agreed to meet at noon, August 2, 1977 at the Tao Restaurant, a vegetarian student-oriented spot near the Indiana University campus. Most likely that was the most expensive lunch Grace, or the author, ever ate.

Not that it really seemed to be at first. For one thing, the Tao was hardly Washington DC's Raleigh, Mayflower, Willard or Statler Hilton hotels where the infamous Robert B. Choate - George C. McConnaughey lunches that eventually contributed to the WHDH license loss were held. The meal was a simple one and, under the circumstances, as pleasant as possible. The author was nervous, for he was going a bit further in challenging a broadcaster than was his normal style. Grace was hard to read, but friendly. Between the morning phone call and the noon meeting, the author prepared an eight point list of "Things Channel 4 could do to improve service to Bloomington." It was not intended as an inclusive list of "demands". The objective really was just to get something on the table about Bloomington's needs; something to talk about and to focus the buyer's attention on the city. Grace received the list well, glanced at it, indicated it would be hard to make firm promises about a new property but said he saw both good ideas, bad ideas and things Teleco, Inc. was already thinking of doing.

A few things about the meeting were troublesome. Grace tended, for example, to turn discussion in the direction of "responsibility to the entire service area" whenever special responsibilities to Bloomington were mentioned. There was a general appeal for trust: "things will be better for Bloomington within a year to 18 months." Overall, it struck the author

as a pretty good beginning. Grace had discovered that the author had edited access magazine in Washington, DC for former FCC Commissioner Nicholas Johnson, but he hadn't shouted obscenities about that. Further discussion seemed, perhaps hesitatingly, to be invited. The author had been "ascertained", and indicated that lack of locally-oriented electronic communications media was a major Bloomington problem.

The meal neared its end and the check arrived, creating some good-natured bantering about who would pay. The author offered to pay for his portion -- a Black Russian sandwich and iced tea -- but Grace insisted he pay as a part of the business expenses associated with acquisition of the station. There were jokes about there really being "no such thing as a free lunch" and that the author couldn't be bought off for the price of the meal, $1.92. Grace, however, did pay the bill and the convestation adjourned to the parking lot of the restaurant where Grace explained that WTTV's signal should shortly improve as he had just approved installation of circular polarization equipment for the station. It looked, to the author, like the start of what would be a period of good-faith discussion over the proposals for Bloomington of WTTV's purchaser. The author hoped he might get some good language for the city in the WTTV application. It was also hoped, however, that this meeting had been as direct a confrontation as would be needed, and that all else would fall into place through simple communication between the author and the buyers. There were a few disquieting things, but it seemed they could be resolved short of resort to legal means.

§1.2...Dialogue: August 4 to October 4, 1977

The August 2nd meeting started a dialogue that eventually included an exchange of seven letters between Grace and the author. Unfortunately, perhaps, the August 2nd "list" became the focus of that correspondence rather than the more general concerns about Bloomington service that had motivated

the list and dominated the conversation. Throughout the correspondence, as during the August 2nd meeting itself, Grace promised that the eventual proof of Teleco's commitment to Bloomington would be found in the totality of the transfer application as presented to the FCC. The author's assumption, from that, was that the conversation and letters concerned what would be, in essence, frills to the general Bloomington service planned by Teleco. The author always expected a transfer application appropriate for Bloomington and Teleco, Inc. -- through Grace -- always promised one.

Until the third week of September, 1977 the author doubted that the heavy legal artillary of a Petition to Deny the transfer would be necessary or fruitful for Bloomington. The exchange of letters was going well. Many of the specific points in the August 2 memo had been directly addressed, particularly in an August 17, 1977 letter from Grace. The original list had raised eight areas of concern. Grace responded affirmatively to six, modified one, suggesting station editorials in lieu of "Free Speech Messages", and only rejected one proposal, that of a formal Bloomington citizens advisory group for the station. The response, to the author, was a bit imprecise on scheduling and length of new Bloomington news coverage and on PSA policies, but overall it looked like a very good development.

On September 3, 1977 the author sent Grace a letter asking for increased specificity in these, and other, areas. At the same time, however, the letter noted that since filing of the application was planned for just a few weeks later, it was necessary to "begin to form a community group with an eye to possible, although I hope unlikely, intervention in the application." The author placed faith in an important passage of Grace's August 17, 1977 letter: "All firm proposals concerning the immediate operation of WTTV subsequent to FCC approval of the assignment application will be detailed in the application to be filed with the FCC...I trust you will agree that

the application, when filed, will provide sufficient detail to insure an adequate understanding of our proposed operation." It was that "sufficient detail" that the September 3rd letter sought. The announcement of an effort to form a community group was a contingency plan that it seemed fair to inform Grace of, a contingency necessitated by knowledge that most transfer applications were then moving rapidly through the FCC and that a supporting citizen group -- if needed and appropriate for a Petition to Deny -- could not be formed at the drop of a hat.

As will be discussed shortly, it did become necessary to file a Petition to Deny. When that was done, the author decided to do it as a single individual and not form a citizen group. Teleco, Inc. seems to have long wondered whether there really was anybody in Bloomington concerned about the transfer besides the author. Teleco's concern was a legitimate one, because the author frequently -- at various stages in the proceedings that followed -- asked for time to consult with advisers in Bloomington (and, for that matter, in Washington, DC). Unfortunately, many of the Bloomington persons with whom the author had frequent contact wanted to remain in the background of this controversy and can not be identified publicly even at this date. These were, for the most part, business and political leaders of Bloomington -- people with too much to lose from antagonizing a person likely to eventually own their community's television station. People in this category were consulted as early as August 8, 1977 and discussion continued with most of them up through the time the Petition to Deny was eventually withdrawn. In all, about ten such Bloomington leaders were privy to the dialogue between the author and Grace and were kept informed of subsequent legal developments. Several of them had been included in Grace's Bloomington ascertainment and had, at that time and on their own, become concerned about the depth of Teleco's interest in Bloomington service. None could be

described as sophisticated in communications law. Several were astonished to find out that WTTV was legally a Bloomington and not an Indianapolis TV station.

Even though most of these major advisers were unwilling to come forward publicly into confrontation through a WTTV Petition to Deny, it still would have been easy to form a Bloomington citizens group to contest the transfer. Publicity about the author's possible Petition to Deny broke on October 7, 1977 when the Indiana Daily Student, the campus student newspaper, ran a page one, 22 column inch story titled "Prof may block WTTV sale." The newspaper found out about the Terry-Grace correspondence through a faculty colleague of the author: the paper's communications reporter was asking what other members of the faculty were doing and the author's colleague suggested that Terry was concerned about the WTTV transfer. The author decided at this time that he would avoid trying the controversy in the papers but, probably because of his journalism background, would answer well-posed questions by reporters. After the Indiana Daily Student story appeared, the author was contacted by many students, faculty colleagues and other Bloomington residents who asked how they could help with his concerns that Bloomington get better TV service. From those publicity generated contacts, plus probably a little public relations work on the author's part, it would have been simple to assemble a Bloomington based citizens group. This was not done, however, for five major reasons:

1) As already mentioned, the group would probably not have included the important, powerful community leaders who wished to remain in the background.

2) Others, particularly those who led established community organizations, could not get approval from their groups to join in a Petition to Deny against the rather rapid deadlines set by the FCC for such petitions.

3) The author wanted any group that was formed to be an informed one, not just a front. The issues that eventually were included in the Petition to Deny were sometimes esoteric ones, and it

seemed impossible to educate a group to those kinds of broadcasting law issues in a short time. It is possible to assemble an informed group to protest a broadcast station license renewal partly because renewals come up on predictable three-year intervals. This transfer came up quickly, Teleco and Sarkes-Tarzian prepared the transfer application with dispatch, and there just wasn't time to adequately educate the members of any Petition to Deny group.

4) At least at the time the Petition to Deny was filed, there was an important legal principle to be established -- and little to be lost -- by filing as an individual. In October, 1977 it was not nearly as clear as it is today that a single individual, without a supporting group, could have standing to file a Petition to Deny.[6] This case seemed to be one that might establish that point if it went far enough for FCC action on a Petition to Deny. Further, there was really little to lose if standing to file as an individual was denied, for the FCC treats defective Petitions to Deny as informal complaints and continues to hear them on their merits. Treatment as an informal complaint could affect ability to appeal an adverse Commission decision in court, but the author doubted he had the resources to go to court anyway, and suspected that the sale would probably collapse if he tried. Treatment as a Petition to Deny was expected from the FCC, but treatment as an informal complaint would do.

5) Finally, Grace and Teleco, Inc. seemed to take the mention of a community group in the September 3, 1977 letter as an indication of bad faith on the author's part. Certainly the author did not intend that, and believed it to be based on a misreading of previous correspondence. He did not want, however, to give Teleco an issue which it could use to attack his reasonableness and good faith in the pre-Petition to Deny exchange of correspondence. In the end, he decided that formation of a citizen group was just not really worth the trouble involved.

A near-fatal turning point for the WTTV transfer came on September 9, 1977 when Teleco Indiana, Inc. and Sarkes Tarzian, Inc. filed the application for transfer with the FCC.[7] On that date, Grace sent Terry a cover letter and the proposed programming section of the assignment application. He

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6. In McCormick Communications, Inc., 42 RR 2d 989 (1978), a case decided after the Petition to Deny was filed, the FCC granted standing to an individual where all that was known was that the petitioner had an address within the service area and claimed to be concerned about its sale. Commissioner Quello objected violently to such a liberal grant of standing. See Id., at 993.

7. There is always, throughout this case, some dispute over whether Teleco, Inc. or Teleco Indiana, Inc. should be used to describe the applicant. Technically, Teleco Indiana, Inc. was the assignee but, as will be shown, the author argued that it was simply an alter-ego for Teleco, Inc. In filings with the FCC the author often just referred to "Teleco," including both.

noted that the September 3, 1977 letter had been taken into account, which was in many respects quite true, and that some of the author's requests for greater specificity had been met. September 9th, however, was the first time that the author had actually seen any portion of the actual transfer application presented to the FCC, and examination of just the section of the application sent to the author gave the first clear indication that a Petition to Deny might be needed. The reason for this was that what Grace sent the author on September 9th, although it incorporated several of the specific suggestions of the August 2nd memorandum and meeting, hinted strongly that the basic and fundamental August concern -- the depth of commitment to Bloomington -- was again in great doubt.

At this point there was a probably regrettable delay, largely the author's fault, in the exchange of correspondence. Terry called Snow at Indianapolis, who predicted it would be at least a month before the FCC announced that the application for transfer had been "adcepted for filing," an action that would start the 30 day time frame within which Petitions to Deny, if any, had to be filed. Snow's estimate coincided with the author's then limited knowledge of how the FCC processed transfer and assignment applications, and as a result Terry anticipated that he would have until early November to prepare any Petition to Deny. The portions of the Teleco application arrived at a busy time, with exams in one of the author's classes and research projects to get started in another. It was just not possible to examine the much more extensive portions of the application that the author knew he had not seen. Feeling that there would not be any further FCC action until early October, the author waited until September 23 to get a copy of the entire application -- 376 pages by Teleco Indiana, Inc. and 598 pages, if sample week logs are included, by Sarkes Tarzian, Inc. -- from Sarkes Tarzian, Inc. A week-end spent with the entire application convinced the author

that there were serious problems with the application and that many of those problem suggested the station would be much more of an Indianapolis than Bloomington station. Other problems with the application could be said to have simply offended his sense of what FCC policy -- the area he teaches at Indiana University -- requires. These, of course, related to the fundamental concern of every community that it have a fully qualified licensee.

On Monday, September 26, 1977 the author found out that the FCC had, contrary to expectations, accepted the application for filing on September 17, just eight days after Teleco and Sarkes Tarzian submitted it. On the 26th, then, Terry composed and sent Grace a single spaced, five page letter "intended to outline, in as much detail as I have now worked it out, the problems with your application that I have identified and have begun to include in a draft petition to deny." The letter identified seven major areas of concern. Since they remained mostly unchanged in the Petition to Deny their substance will be discussed at that point in this paper. After summarizing these concerns, the letter expressed the hope that Grace would "carefully consider" the complaints "and then let me know, if you can, in any way, amend your application to deal with some or all of them."

In reality, it was hard for Teleco to respond to those complaints at that time. First, many of the problems identified were not subject to easy correction. To remedy one, for example, Teleco would have had to restructure itself to reduce the amount of foreign investment, hardly something likely to be done at that point in the proceedings. More crucially, since the FCC had accepted the application for filing much faster than expected, time for avoiding a Petition to Deny was running out -- any petition would be due at the FCC before the close of business October 17, 1977. Teleco had little time to act to avoid a petition. The author did expect, however,

to get a substantive response to his complaints, and for Teleco to make at least some effort to continue to try and talk things out. On October 4, 1977, however, Terry received the last of the series of letters from Grace, a simple one-page note that was unresponsive to the complaints raised but expressed, sadly and resignedly the author feels, disappointment that a Petition to Deny seemed so likely. Grace also accused the author of expanding his "alleged concerns at this late point in time far beyond the limited concern initially expressed" in the letters of August 2nd and September 3rd. This charge ignored the fact that whatever broadening had occurred, and obviously there was some, traced to the transfer application filed September 9th, and related to statements or language the author could not have known about before that date. Since Teleco seemed uninterested in a substantive response to the September 26th letter, Terry prepared a formal Petition to Deny and filed it, on the deadline, October 17, 1977.

The issues in the Petition to Deny will be discussed at length in the next subsection of this paper. As will be seen, some focus on arguable issues of law. Others, however, have always seemed to the author and to communications attorneys with whom he has discussed them to be most straightforward matters under FCC regulations -- in fact, some were things the FCC might have questioned even without the Petition to Deny. Other statements in the application clearly amounted to sort of "red flag" statements to anyone, like the author, concerned about whether WTTV would adequately serve Bloomington. Why did the application go to the FCC with such statements and, in his opinion, clear errors -- particularly in ascertainment? The author can only offer speculative comment.

The reason was not lack of money or qualified counsel. Teleco Indiana, Inc. was represented by the Washington DC law firm of Hogan and Hartson, a

well-known firm with a substantial broadcast law practice. Teleco's major attorney was William S. Reyner, a young member of the firm but, as Terry learned, plainly competent. Tarzian was represented by the almost legendary firm of Cohn and Marks and, within that firm, initially by Martin J. Gaynes, well-known, among other things, for a West "Nutshell Series" text on mass communications law.[8] Teleco's legal fees were being handled on a deferred basis, with the buyers to settle up with their law firm at closing or, should the sale collapse, through the $500,000 being held in escrow for the sale. Tarzian could clearly pay legal fees out of the revenues of WTTV. So long as the parties wanted to pursue the transfer there was not really a limit on what they could spend on legal assistance. Why, then, did the application go to the Commission quite as it did? The author can only advance speculative theories.

First, Grace -- in a much later conversation not off-the-record -- indicated that he was sure from the August 2nd meeting on that there would be a Petition to Deny. The author wasn't sure about that until much later, but if Grace was convinced at that point, then it makes some sense not to expend legal resources making a "bulletproof" appl'cation by trying to anticipate every complaint a Petitioner to Deny might make but to, instead, wait and see what the Petition to Deny actually contained. Since the FCC is relatively tolerant toward amendments to applications once filed, they could be made after the Petiton to Deny was in.

Second, even if Grace personally thought the Petition to Deny inevitable there could have been a faction within Teleco with doubts about that; in essence

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8. Zuckman, Harvey L. and Martin J. Gaynes, Mass Communications Law in a Nutshell, St. Paul: West Publishing Co., 1977.

people suspecting a bluff. That, too, would be a reasonable expectation given the costs and general difficulties associated with preparation of a Petition to Deny by a private individual without Washington counsel. Such a faction might have argued that a substantive response to the September 26th letter, or any further efforts to head off a Petition to Deny, was unnecessary since they thought Terry unlikely or unable to carry through with the Petition to Deny threat.

Finally, the author would have to admit that he was probably hard to figure out as a potential Petitioner to Deny. Petitions to Deny have historically come mostly from groups concerned about particular programs or program practices -- or hiring -- rather than from people concerned about general service to the entire community of license. Most have come from minority or female groups acting to protect the special interests of their constituencies -- a white male doesn't fit. Further, at the risk of sounding egotistical, the author thinks of himself as more informed than many other Petitioners to Deny about broadcasting law and policy. That kind of specialized knowledge was probably not something Teleco initially expected to encounter in Bloomington, Indiana -- and also probably not something their counsel had met before -- and may have made it hard to decide what to do with such an oddball Petitoner to Deny.

Would efforts to respond to the September 26th letter, or to have avoided "red flag" language or somewhat obvious problems with the ascertainment of community needs, truly have helped avoid this confrontation? The author's answer to that would be yes. Clearly it was impossible for Teleco to have remedied every complaint in the September 26th letter, but correcting some of them was possible and, if done, would have made the decision as to whether or not to file a Petition to Deny a much harder one for the author. Terry would admit that unfounded Petitions to Deny have been filed by others, and

that Teleco could reasonably have feared that he would file no matter what they did to attempt to correct errors claimed in the September 26th letter. All he can do, at this late date, is claim that had Teleco promptly attempted further modification of its application in late September and eroded what Terry considered some of his more obvious issues, then there would have been a much increased chance that there would not have been a Petition to Deny. For professional reasons, simple concern about his integrity, the author would never have filed a weak Petition to Deny. Teleco's failure to amend in any way -- even to take away obvious issues -- meant that Terry's estimate was that his legal position was very strong. Teleco's decision to respond as it did to the September 26th letter, and to submit the kind of application it did to the FCC, sort of sealed the decision to file the Petition to Deny, an action that moved things from a period of dialogue to one of confrontation before the FCC.

§1.3...Confrontation: October 17, 1977 to January 16, 1978

It's not easy to describe exactly how the Petition to Deny was written. As most academics will appreciate, there's often a great deal of time and energy devoted to thought about a research problem before pencil is set to paper. Such was the case here. The bare bones of the allegations against the application had been sketched out in the September 26, 1977 letter to Grace. Some legal research was done for that letter, mostly into how the FCC interpreted its alien (foreign) ownership limits under the Communications Act and how the Commission had applied what is known as a "Suburban Community Policy" to transfers of broadcast stations. In large part, however, the September 26th letter had been written on the basis of the author's existing knowledge of FCC regulations and licensing standards. That meant that writing the Petition to Deny required further legal research. That research began about October 6th.

There were also "facts" to be substantiated and data to be collected from the Bloomington community before the Petition to Deny could be submitted. Although the eventual Petition to Deny was largely based on the contents of the applications Teleco Indiana, Inc. and Sarkes Tarzian, Inc. filed with the FCC and did not require, for example, program monitoring, the author was placed in a position where he wanted to prove that Bloomington contained consumer affairs, environmental and military "community leaders." Many prior Petitions to Deny have been rejected by the FCC for failure to prove that there were "substantial and material questions of fact" in dispute -- the statutory standard of section 309(d)(2) of the Communications Act for Petitions to Deny. Section 309(d)(1) requires that such facts be supported by affidavits of persons with knowledge of them. Terry wanted to avoid the problem faced by so many other Petitioners to Deny of failing to support their allegations with new factual information. As a result, there was some investigative work -- research other than legal research -- to be done.

Early in the drafting of the Petition to Deny the author made two key strategic decisions. One of these that there would be a vigorous effort to support allegations with facts and not to run the risk of allowing allegations to stand unsupported. A related strategic decision was that these facts, and the legal issues raised, would not be intended to create much new public interest communications law but would, instead, try to build the case against the transfer on well-established FCC principles. Basically the author decided that his primary objective was to protect the interests of Bloomington. If new law was created along the way, fine, but that was only a secondary objective. The author's experiences with the FCC suggested that the more one asked them to make new law in deciding a case, the less likely one was to get the relief requested. The petition, then, would try to track old law, and add as many supporting facts to the record as possible given the short deadlines.

There was, of course, a professional self-interest to all this. The more factual the petition could be made, and the more it stayed away from asking for new law, the harder it would be for the FCC to finesse it. A close call, some kind of narrow loss over the petition, could be explained as the result of some kind of FCC bias toward the broadcasting industry. A severe rebuke, however, could be professionally fatal. Facts, then, had to be gathered carefully and the showing that there were consumer affairs, environmental and military leaders required affidavits. Requests for those affidavits went out by mail October 4, 1978. They went out prior to receipt of Grace's final letter because it was essential to start gathering such data against the October 17th deadline. They would not have been used had Grace's letter been adequately responsive. Gathering of additional facts needed to support the allegations in the Petition to Deny began in earnest October 7th.

The author faced an odd initial problem in starting to write the Petition to Deny. Although he had been around communications law as an academic for about seven years, and around broadcasting law for about four of those, he was unfamiliar with the exact contents of a Petition to Deny. He had worked for the citizen movement, as summer editor for Nick Johnson's access magazine in Washington DC during 1976. He had read many FCC cases discussing Petitions to Deny, talked to people who had filed them and to broadcasters against whom they had been filed, but never actually read one. A model was needed.

Fortunately, one was readily available. On August 25th, 1977 Citizens Communications Center, a Washington DC based public interest communications law firm, had filed a Petition to Deny Joe Albritton's proposed transfer of WJLA-TV, Washington, DC. A call to the Executive Director of Citizens, Nolan Bowie, quickly brought a copy of the WJLA petition. The issues were quite

different, and Citizens was plainly trying to create new law about minority ownership issues in broadcasting, but the WJLA Petition to Deny still provided a useful model. WJLA returned to haunt the proceedings later.

About this time the author had to decide whether or not to seek legal counsel. As will be discussed later in this paper, that decision was partly a philosophical one involving professionalism. It was also, however, a practical issue. Could counsel be located, against very short deadlines, that would be both helpful and affordable? Bloomington counsel, willing to work pro bono, could be located but was not expected to be very helpful since s/he would know nothing of FCC practice. Citizens was a firm the author knew well, but he decided early not to approach them. There were two reasons for that. First, he knew that Citizens just did not have the resources, at the time, to take on another case. Second, he knew that Citizens preferred to enter only cases that might create new public interest law, and he had already decided to make this as traditional and likely to succeed a Petition to Deny as possible. Citizens, then, was used only for limited telephonic advice and, overall, the author decided to proceed without formal counsel.

Bowie provided one very useful early suggestion. Noting that Terry was concerned about the quality of Teleco's Bloomington ascertainment, he suggested consulting the public files of the local commercial radio stations to see if their ascertainments were somehow "better" than Teleco's and might be introduced into the record as examples of what could be done. Bowie's suggestion was a good one, and the eventual Petition to Deny did include, as supporting exhibits, substantial excerpts from the Bloomington ascertainments of radio stations WTTS/WGTC. Oddly, those stations were -- and are -- owned by Sarkes Tarzian, Inc. Bowie and Ed Kuhlman, also of Citizens, were consulted at other times throughout the proceedings.

There were two other sources of quasi-legal assistance early in the controversy. One was Dr. Ralph Jennings of the Office of Communication, United Church of Christ in New York. Jennings' group had filed many Petitions to Deny and assisted community groups in preparing them. He provided advice primarily on points that might be raised early in the petition to argue that the author had legal standing. The other source of aid was Dr. Barry Cole from Washington, DC. Cole, a well-known author and critic of the FCC, had been Terry's predecessor as a professor of telecommunications law and public policy at Indiana University. As such, he knew about the history and local service of WTTV from a period before the author's arrival in Bloomington and, from his days as an FCC consultant and staff member, knew how the Commission processed Petitions to Deny. Terry sought Cole's advice on how best to raise the issues he had identified and also asked about Commission sources that could be consulted to help fill in the early legal history of WTTV. Cole's advice was quite useful, although it could not be as specific as Terry might have liked since Cole had not read the WTTV transfer applications. Cole was consulted -- like the people at Citizens Communications Center -- at other points throughout the controversy.

It was also necessary to decide, about this time, how directly Indiana University should become involved in the author's activity. Several faculty colleagues expressed interest in the discussions Terry had been having with Teleco, and many knew of at least the substance of the letters that had been exchanged. Most were not experts in law and could not be of much actual help in writing the Petition to Deny, but -- like Cole -- they had historical knowledge of WTTV (and of its earlier sometimes exploitive uses of Indiana University) that provided useful background. Some thought was given to asking colleagues to join in the Petition to Deny but, for the reasons already discussed for not forming a community group, that idea

was eventually dropped. The author held an early meeting with the chairman of the department and discussed with him the possibility that a Petition to Deny would be filed. Its impact upon the department was discussed, but the chairman largely advised that the author act as his conscience dictated -- so long as he acted responsibly. The chairman, after all, had been a member of the Madison, Wisconsin community group that once petitioned against the renewal of WISC-TV in that city,[9] so he could hardly order the author to abandon his plans. He could have made it difficult to act, however, in a thousand small ways -- but chose not to do so recognizing, instead, that this was an issue of the author's academic freedom. He did, however, decide to personally adopt a kind of "know nothing" attitude toward the entire controversy. This seemed to have been a concession to industry relations. By not knowing the details of either the author's position, or of the positions taken by Teleco or Sarkes Tarzian, he could not be forced to take sides on the dispute. He know, generally, what he read in the papers -- and occasionally a bit more probably picked up from random discussion with members of the faculty -- but overall he decided to, in essence, sit this dispute out.

It was decided, and the chairman agreed with this, that it should be made plain to the FCC that this was a private action taken by the author, who happened to be an Indiana University faculty member, rather than an action with university endorsement. All filings with the FCC made that point. From the start of discussions with Teleco and Sarkes Tarzian, the author paid personally for any phone calls made from university telephones but related to this dispute, behavior that substantially increased the cost of the action but separated the university from advocacy. At the beginning of the dispute the author tried to restrict Teleco and Sarkes Tarzian to contacting him only through his home phone number and mailing address, but that proved impractical as the author could hardly

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9. See n. 1, supra. Petition to Deny denied in Television Wisconsin, Inc., 35 RR 2d 995 (1975).

be there during what were the normal business hours for the broadcaster parties to the case. Eventually most phone contacts were made at the author's university office, but the time spent was minimal and not a distraction from the author's normal university duties. Except when the story of the author's activities first broke in the local press, the case was not discussed in the author's classes, but the author agreed to talk with students about the case outside of classtime. Since several students were simultaneously working for WTTV in Bloomington as part-time employees, a special effort was made to avoid conflict of interest for those students by trying to turn a deaf ear when they volunteered any information that might be pertinent to the case.

Legal research and factual data gathering for the Petition to Deny continued, on a part-time basis, through about October 14th, 1977. The author had planned to attend a fall NAB regional conference in Chicago October 13-14, but those plans were scrapped to work on the Petition to Deny without taking time away from other teaching and research duties. Much time was devoted to gathering affidavits and researching the legal arguments to be made, but little preliminary writing was completed. The author began to mentally sketch out a full outline for the Petition to Deny about the 13th and, by the 15th, had produced a full written outline. That outline suggested a need for more research into WTTV's legal history, which was completed that day. Actual writing of the Petition to Deny began the evening of the 15th.

Writing continued, almost non-stop, until about 2:00 p.m. on October 17th. The original objective had been to complete a first draft, then revise and retype it. As writing progressed, however, it became obvious that this was impossible, without secretarial assistance, against the FCC's October 17th deadline. The outline was adequate to produce a coherent product, but the writing and typing task was large. The plan had been to put the final

draft on an airplane the morning of the 17th, have copies made in Washington, DC and delivered to the FCC that afternoon. About 3:00 a.m. on the 17th, however, it was obvious to the author that the draft could not be completed in time. So, the author took as much as had been completed to Washington personally -- about 50% of the manuscript -- and typed the remainder in the offices of the National Citizens Committee for Broadcasting a few blocks from the FCC. The Petition was complete, but not well-proofed, by about 2:00 p.m. In that form, it was taken to Citizens Communication Center for duplication of the required nine copies (plus a few extra for the author and for Citizens), and -- about 3:00 p.m., -- delivered personally to the Secretary's office at the FCC.

In all fundamental ways the Petition did track the September 26th letter to Grace. It was organized to treat six major areas of objection to the proposed transfer. Those issues were summarized in the early pages of the Petition to Deny.[10]

> 1. In general, Teleco's application for transfer of Station WTTV subordinates the interests of its community of license, Bloomington, Indiana, to the interests of Indianapolis, Indiana and contravenes the well-established principle that a licensee must devote primary attention to its community of license. Specifically, Teleco, Inc. has designated an artificial and gerrymandered area -- the "Greater Bloomington-Indianapolis Area" -- as its primary service area, a designation which ignores the separateness of Bloomington from Indianapolis and the primary responsibility to the community of license. Further, Teleco, Inc. and Teleco Indiana, Inc. have paid a price for the station, and assumed a debt structure connected with the purchase, which predetermines that the station will be primarily oriented to Indianapolis rather than to Bloomington. As a consequence, concepts residing within what the Commission commonly calls a "Suburban Community Issue" mandate denial of this request for transfer.

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10. The "Summary of Issues", infra., p. 27, outlines these six major issues and what happened to them throughout the controversy. Column one describes the issues in short form. Column two describes how they were opposed in the Teleco Indiana, Inc. Opposition, and column three describes the reactions of Sarkes Tarzian, Inc. in its Opposition. Column four tells how the author responded in his Reply while column five explains how, if at all, the issues were treated in the final agreement between Teleco and Terry.

2. The assignee's ascertainment of community needs is... procedurally deficient and does not comply with the required Primer on Ascertainment of Community Problems, 21 RR 2d 1507, 1541 (1971). Specifically; the assignee does not inform the Commission -- or petitioner -- who conducted the community leader interviews, making it impossible to judge whether or not they were conducted by appropriate management level personnel; the assignee does not inform the Commission who the community leaders interviewed were, nor explain what groups or interests they lead or represent, nor how they were determined to be leaders; however, the assignee admits that leaders of certain specified significant Bloomington community groups were not interviewed. As conducted, this procedurally deficient ascertainment none-the-less offers clear evidence that the assignee does not propose to focus primarily on Bloomington problems, needs and interests but has, instead -- in contradiction of established Commission policies -- subordinated the problems, needs and interests of his proposed community of license to the problems, needs and interests of a very broadly defined service area. Even admitting, arguendo, that the Commission may accept this broadly defined service area, the ascertainment fails to comply with articulated Commission policies for the ascertainment of communities within the service area.

3. The assignee may not be qualified as a Commission licensee under sections 310(a)(4) and 310 (a)(5) of the Communications Act dealing with alien ownership. There is a reasonable doubt as to whether Teleco, Inc. (a Michigan corporation) or Teleco Indiana, Inc. (an Indiana corporation) is the true assignee here. While Teleco Indiana, Inc. may possibly be a qualified licensee under the aforementioned sections of the Communications Act, Teleco, Inc. could not be a Commission licensee. Basically, Teleco Indiana,Inc. appears to be a rather artlessly created effort to subvert the spirit, if not the letter, of the restrictions on alien ownership specified by Congress in the Act.

4. There is some evidence of an unauthorized transfer of control of WTTV to Teleco Indiana, Inc. Such a transfer, of course, would disqualify Teleco Indiana, Inc. (and, probably, Teleco, Inc.) from holding the WTTV license. Evidence for the unauthorized transfer of control includes: (1) the fact that the President of Teleco, Inc. has "authorized" circular polarization of the WTTV transmission system -- such authorization, of course, coming prior to the Commission grant of the application for transfer, (2) Teleco, Inc. has designated Mr. Elmer Snow to be its agent in Indiana (and named him to the board of Teleco, Indiana) at a time when Mr. Snow continues to function as General Manager of WTTV under its present owners, Sarkes Tarzian, Inc. and (3) Teleco, Inc. supervised and directed present Sarkes Tarzian employees in the ascertainment of community needs.

> 5. There is a reasonable case to be made for the charge that the present owner, Sarkes Tarzian, Inc., has moved the main studios of WTTV from Bloomington to Indianapolis without Commission authorization and nothing in the assignee's application makes it clear that the assignee proposes to operate the Indianapolis "auxiliary studio" in compliance with FCC policies for the operation of main and auxiliary studios. At the very least, the Commission requires precise information from the proposed licensee about its plans for the Indianapolis studios before the required public interest finding can be made by the Commission.
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> 6. The present licensee, Sarkes Tarzian, Inc., gained waiver of the Commission's station ID rule, sec. 73.652 (now 73.1201) in 1959 to identify the station as Bloomington/Indianapolis. The practical effect of that waiver has been to draw the station away from its identification with Bloomington and to permit unhealthy conceptions about the station being an Indianapolis station... This waiver is more than ten years old, has had pernicious effects, and is probably no longer appropriate given changed circumstances between 1959 and the present...(T)he Commission cannot make a proper public interest determination concerning this proposed transfer without considering the impact of the continued waiver of sec. 73.1201 upon service to Bloomington. (Petition to Deny, pp. 3-8).

Fleshing out these allegations took a total of 116 pages: 58 pages for the text of the Petition to Deny, 56 pages for supporting exhibits and two pages for required Certificates of Service and a Petitioner's Affidavit. Space in this paper, obviously, does not permit the full repetition of the Petition to Deny, only a summary of its major arguments.

After the above summary of allegations, the Petition moved to five pages devoted to a showing that Terry had legal standing to file the Petition to Deny. This was included as the author expected an attack upon his standing by the broadcaster parties, primarily because, as already noted, he had decided to file as an individual rather than create a paper citizen group. There were other problems to his claim of standing, most notably that he was not a resident of the city of Bloomington. One purpose of the standing showing was to demonstrate how tied he was with Bloomington: he lived just 2.0 miles from the city limits, had previously lived in the city, worked at Indiana University in the city boundaries, had a home mortgated to a Bloomington lending institution, did most shopping in the city, and received postal, telephone and water service from it. The author claimed regular

SUMMARY OF ISSUES: FROM PETITION TO DENY THROUGH WITHDRAWAL OF PETITION.

Issues as Related to the Terry Petition to Deny (October 17, 1977)

1. Teleco has subordinated the Interests of Bloomington to Indianapolis and the application is not realistically one for Bloomington. Objections to "Greater Bloomington-Indianapolis Area." Suggestion that FCC Investigate whether $26,000,000+ purchase price will preclude Bloomington service.

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2. Flaws in Ascertainment of Community Needs:
   a. No information on who did leader interviews.
   b. No information on who was interviewed and why they were "leaders."
   c. No interviews with Bloomington Consumer Affairs, Environmental or Military leaders.
   d. Data handled so as to subordinate needs of Bloomington to Indianapolis: #1 community leader problem is claimed to be decay of downtown Indianapolis.
   e. Not enough leaders interviewed in Bloomington to satisfy FCC expectations.
   f. No clear evidence that communities in the service area but outside of Bloomington and Indianapolis have been correctly ascertained.

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3. Allen (foreign) Ownership Complaints. Alleged that Teleco Indiana, Inc. was "dummy corporation" created to get around Communications Act limits. Argues that Teleco, Inc. should be considered true assignee. Shows that wrong balance sheet -- for Teleco, Inc. -- was submitted -- Teleco Indiana, Inc.'s was required. Notes Teleco Indiana, Inc. may not have complied with Indiana law & bylaws.

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4. Unauthorized transfer of control: (1) Grace "authorized" circular polarization (2) Snow has been named Teleco, Inc. Indiana agent and (3) Sarkes Tarzian, Inc. allowed Teleco, Inc. to direct WTTV employees in conduct of ascertainment interviews.

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5. Unauthorized move of main studio: Indianapolis studio is 2.26 times size of Bloomington "main" studio. It does not appear that at least 50% of all non-network, non-entertainment programing originates from Bloomington.

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6. FCC should investigate "Bloomington-Indianapolis" ID waiver effects on Bloomington. Has pernicious effects, and facts have changed since it was granted since 1959: Bloomington has grown. Indianapolis no longer fully served by WTTV signal, development of UHF-TV Ch. 40 in Indianapolis is harmed and Teleco, Inc. lacks Sarkes Tarzian's Bloomington ties.

SUMMARY OF ISSUES: FROM PETITION TO DENY THROUGH WITHDRAWAL OF PETITION. (cont.)

Teleco Opposition (November 7, 1977)

Terry misreads the law. City of Camden is a radio case not applicable to TV. FCC has never placed that much emphasis upon definition of primary service area and, anyway, Bloomington has not been excluded. In addition, plans for Bloomington programing show that station will meet its obligations. FCC should be concerned with price only to determine whether Teleco Indiana, Inc. has resources to buy and operate the station as planned.

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a. Not considered necessary, but provided by amendment.
b. Not considered necessary, but provided by amendment.
c. Teleco claims not true, that it could have "double counted" leaders. Does additional interviews anyway, adds by amendment.
d. Argues that Bloomington and Indianapolis share many common problems; tries to show this by breakdown of two communities.
e. Says Petitioner misreads FCC requirements and that 220 interviews for entire service area are enough. Says Petitioner would expect an ascertainment more thorough than FCC has ever required.
f. Says that the communities have been ascertained, identifies leaders.

Claims that "dummy corporation"charges are unfounded, and "flow-through" theories are not applicable. Admits that Teleco Indiana, Inc. may not yet exist under Indiana law, but will be created when FCC approves transfer. Submits revised balance sheet for "Teleco, Inc. and its Subsidiary."

Terry has placed too much emphasis on Grace's word -- it was already in the works before the sale. Claims Snow is not now a Teleco Indiana, Inc. nor Teleco, Inc. employee. Says FCC has approved this kind of ascertainment in past.

Teleco does not believe Sarkes Tarzian has violated main studio rules. Will continue to operate studios as FCC requires.

There is no real "waiver" to reconsider, dual ID is granted automatically. Terry can't ask to "delete" the ID. What really matters is only economics and competitive situations in a market, and they are not here.

SUMMARY OF ISSUES: FROM PETITION TO DENY THROUGH WITHDRAWAL OF PETITION. (cont.)

Sarkes Tarzian Opposition (November 7, 1977)

None

None

None

Provides elaborate history of Sarkes Tarzian's long interest in circular polarization. Says Terry's theory would mean a station employee could not buy station where s/he worked. Says FCC has approved ascertainments like this before.

Things are OK as FCC has approved this set-up since 1964. There has been abundant programing for Bloomington, at least 50% of non-commercial, non-entertainment programing originates from Bloomington. Studio size is not determinative of main studio issue.

There is a "waiver", but no case made for reconsideration. Bloomington's growth is not relevant, consideration of Indianapolis "UniGov" would be "novel," and FCC staff misinformed Terry as to reasons for 1959 grant. UHF case not made, requires economic sharing. The "pernicious effects" aren't subject to FCC concern, on-air ID always done properly.

SUMMARY OF ISSUES: FROM PETITION TO DENY THROUGH WITHDRAWAL OF PETITION. (cont.)

Terry Reply to Oppositions (November 17, 1977)

Teleco misreads the law. It is not at all clear that cases they cite preclude applying City of Camden to television -- the issue seems open. Elements of the FCC's "Surburban Community Policy" may be considered in transfer cases when there are arguments over more than coverage area alone -- here including the dispute over the "Greater Bloomington - Indianapolis Area" and ascertainment errors. Terry believes that Bloomington does not receive "primary service" just by being included in the "Greater Bloomington-Indianapolis Area" but that instead Bloomington must be made "primary" or it will be innundated by Indianapolis. Teleco is, in effect, saying that all the service area gets its "primary" attention. FCC should still consider the $26,000,000+ sale price. Terry is wary of the invitation to consider Teleco's proposed Bloomington programming for two reasons. First, preference for content-neutral FCC regulation. Second, programming proposals are supposed to be based on ascertainment results, but Terry believes Teleco's ascertainment was -- and remains -- flawed, making it illogical to consider programming. If it is considered, the programming proposals for Bloomington do not give it primary attention, for all you have is a part-time newscaster and about three minutes of Bloomington news per day. Even this programming may not serve Bloomington because it would theoretically be based on a flawed ascertainment.

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a. The amendment provides the information needed, but should be rejected under Stone v. FCC, 25 RR 2d 2001 (CADC, 1972).
b. The amendment provides only some of the information needed, but should be rejected under Stone anyway. Thirty-eight of the Bloomington interviews should be disregarded as it is impossible to conclude that persons interviewed were "leaders."
c. The additional interviews should be rejected under Stone. Even if they are accepted, the "numbers don't add up" when the additional interviews are concerned. Either the additional persons said nothing about community problems, or those problems were not entered into Teleco's total assessment of community problems and, from there, into programming plans. Seems as if interviews were just conducted to satisfy FCC and Terry, and not integrated into programming plans. In general, Teleco fails to adequately link programming plans to specific community problems and needs.
d. Now that Teleco breaks down Indianapolis and Bloomington problems it is easier than ever before to see that Indianapolis has been allowed to dominate Bloomington.
e. Teleco misreads Terry's reading of the law. He had just argued that at least 100 Bloomington interviews were required.
f. Teleco now admits that it has failed to interview in one of these communities.

The original concerns about foreign control are now heightened. Teleco now shows that one of the Canadian directors has acquired control over all the Canadian Teleco, Inc. stock. Even cases cited by Teleco in its opposition would seem to say FCC could not approve ownership of this stock by a director of Teleco, Inc. Furthermore, Teleco now admits that Teleco Indiana, Inc. does not esixt and is asking FCC -- in circumstances where parent can't be a licensee -- to grant a license to a nonexistent company.

Terry concedes the issue about Grace, says he used an exaggerated word that Terry in essence believed. Sarkes Tarzian has convinced him otherwise. Says that Snow's designation as an agent was voluntary -- unlike purchase situation advanced by Sarkes Tarzian -- and should have been avoided. Argues FCC has only approved using previously done (for renewal) interviews in transfer cases, not instances -- as here -- where new interviews were done at direction of purchaser.

SUMMARY OF ISSUES: FROM PETITION TO DENY THROUGH WITHDRAWAL OF PETITION. (cont.)

1964 actions by FCC approved set-up only given financial situation of station, which has much improved. Studio size is relevant, if not determinative. On basis of Sarkes Tarzian Opposition, it can be shown that "auxiliary" studio is 2.26 times size of main studio, has all executives, 97% of the full-time work force, and originates 98% of all programming. The standard should be 50% of all non-network programming, but even if it's just 50% of all non-entertainment, Sarkes Tarzian has not met that. If programming offered is examined, it's almost all Indiana University sports related; record of average of one Bloomington story -- usually sports score -- per program is not adequate.

The issues should be treated as a "waiver" and, if it is, everything argued by Terry should be investigated. He never asked that the dual ID be deleted, just investigated or rejustified by Teleco, Inc. In deciding whether or not to grant the dual ID, the commission need not restrict itself to economic and competitive considerations -- it may consider anything relevant to the public interest including the differences between 1959 and 1977 and between Teleco, Inc. and Sarkes Tarzian, Inc. That "Uni-Gov" may be a novel issue doesn't mean it should be ignored. Terry can't make an economic UHF case because FCC keeps licensee financial records confidential.

SUMMARY OF ISSUES: FROM PETITION TO DENY THROUGH WITHDRAWAL OF PETITION. (cont.)

Provisions in April 14, 1978 Teleco Indiana Amendments

Teleco amends to drop mention of the "Greater Bloomington-Indianapolis Area." Says instead that its "principal commitment shall be to serve the unique problems, needs and interests of the city of license, Bloomington, Indiana. The Applicant also shall endeavor to provide programming of interest to the residents of the Indianapolis, Indiana Metropolitan area.

Teleco also promises to hold an open, annual meeting in Bloomington to which community leaders will be invited. The meeting will be for both ascertainment purposes and "to receive any other comments on WTTV's service."

Teleco will in the future prepare separate annual "programs - problems" lists for Bloomington and for the Indianapolis metropolitan area. These lists will be placed in the station's public file, and will "endeavor to identify separately that programming which is responsive to the unique problems, needs and interests of the Bloomington area." Presumably this will mean that Teleco will not, in future ascertainments, let Bloomington problems get submurged in Indianapolis problems.

Not addressed.

Not addressed.

Teleco will transfer one planned ½ hour public affairs program from the Indianapolis to the Bloomington studios. Will also purchase a fully-equipped Bloomington news vehicle, hire a full-time Bloomington Director of News and Public Affairs, upgrade Bloomington Studio Manager, hire one full-time and 3 to 5 part-time Bloomington news reporters/photographers and "provide equal emphasis to Bloomington and Indianapolis news." Will originate more than 50% of total news, public affairs & "other" programming from Bloomington, including at least 50% of local news and more than 50% of public affairs. Bloomington offices for GM and Teleco Indiana, Inc. President. Keep records to show all this done.

Not addressed -- ignored. (Note: Pre-Petition to Deny discussion, however, led to a Teleco, Inc. promise to increase WTTV promotion using Bloomington media. That promise was included in the transfer application.)

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viewership of Channel 4, noted his background and expertise in telecommunications law, previous involvement in some FCC proceedings, and willingness to gather and submit relevant evidence to the FCC that it could not get from other sources. Finally, the author noted that the Mayor of Bloomington had expressed some interest in the transfer to the Commission and that articles about the controversy had been judged newsworthy by the local press. The purpose of these comments was to show that the author was not the only person concerned about Bloomington oriented service and was not a non-newsworthy crackpot.

The next section of the petition, some 20 pages, was historical in nature. Part of it reviewed, much along the lines of this paper, the correspondence between Terry and Grace. That showing was included to demonstrate that, as the Commission expects, there had been some effort to resolve differences before resorting to legal action. The section also reviewed several previous FCC cases involving WTTV. Those cases mostly related to efforts of Sarkes Tarzian, during the 1950's and 1960's, to move the WTTV assignment or station location from Bloomington to Indianapolis. The cases showed that the FCC consistently rejected those efforts on the theory that Bloomington was entitled to local service. The purpose of including the cases in the Petition to Deny was twofold. First, to offer preliminary support for the charge, to be made later in the Petition to Deny, that Sarkes Tarzian had unlawfully moved the main studios of the station to Indianapolis. Second, to provide a general background against which to urge the Commission to act, once more, to protect Bloomington's interest in local TV service. The main part of the Petition began about page 21, with the next 33 pages devoted to the central factual and legal arguments for opposition to the proposed transfer.

ISSUE 1: That the Application Subordinated Bloomington to Indianapolis and was not Realistically an Application for Bloomington.

This issue was largely an effort to resurrect and transfer to TV an earlier FCC radio decision, City of Camden, 16 RR 2d 555 (1969). City of Camden is a somewhat unique case, if for no other reason that than the 5-1 majority decision was written by Nicholas Johnson, normally the FCC's most prolific dissenter. City of Camden involved the effort by Camden, New Jersey to sell its city-owned commercial AM station to McLendon Broadcasting. McLendon's purchase was approved by the initial decision of the FCC's Administrative Law Judge [City of Camden, 15 RR 2d 193 (1969)] but then, on the FCC's initiative, designated for a hearing. The Commission's concern was whether McLendon really proposed to serve Camden, New Jersey or was just using the station to introduce his good music format to the Philadelphia, PA radio market. As the FCC put it, the fundamental issue was whether McLendon's application was "realistically designed to meet the needs of Camden, New Jersey or Philadelphia, Pennsylvania." City of Camden, 16 RR 2d 555, 558 (1969).[11]

This case comes from the time before the FCC specified elaborate guidelines for how prospective licensees should ascertain the needs of the communities they served, but the Commission still expected proposals to operate stations to be based on knowledge of community needs. The FCC concluded that McLendon's ascertainment fell short of the Commission's standards, but that from what had been done it was clear that the application as a whole was not realistically one for Camden. In doing this, the FCC applied some of the principles of its so-called "Suburban Community" issue

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11. It's historically interesting to note that Marcus Cohn and Martin Gaynes, the attorneys in this proceeding for Sarkes Tarzian, had represented The McLendon Corporation in City of Camden.

[Suburban Policy Statement, 6 RR 2d 1901 (1965)]. Although that policy was primarily designed for comparison among applicants for new stations, the Commission found elements of it applicable to a transfer. As the Commission explained in a footnote...

> 29/ Although the 307(b) Policy Statement does not generally apply to applications for assignment of station licenses, whether a station currently operating as a local transmission facility for a suburban community to which it is assigned will continue to serve that primary function is a pertinent inquiry when an assignment of license application is presented to us. In this connection, the issue concerning the McLendons' programming policy was specifically included to determine whether that proposal is realistically designed for the assigned community or for the nearby, larger community. City of Camden, 16 RR 2d 555, 572 (1969).

The Petition to Deny argued that the Commission should, in the Bloomington case, likewise take over some elements of the Suburban Policy to determine whether the WTTV transfer application was realistically one for Bloomington or for Indianapolis.

First, the Petition urged the Commission to look at the validity of what Teleco called the "Greater Bloomington-Indianapolis Area." In response to Question 1(a) of Section IV-B of Form 314, transferees are required to describe "the major communities or areas which applicant principally undertakes to serve." Teleco stated that...

> The applicant principally undertakes to serve the city of license, Bloomington, Indiana, and the greater Bloomington-Indianapolis area, which includes the Counties of Marion, Morgan, Hendricks, Johnson, Shelby, Boone, Hamilton and Hancock. (Teleco Application, Exhibit IV-q, p. 1).

The Petition to Deny called this a "gerrymandered geographic unit" (Terry petition, p. 23) which subordinated concern for Bloomington to concern for Indianapolis or, at least, did not place primary emphasis upon the city of license as expected by the FCC. Noting that "(t)he 'greater Bloomington-Indianapolis area' must be visually depicted to be understood" (Terry petition, p. 23), the Petition to Deny included, as Exhibit C, a sketch

of the "greater Bloomington-Indianapolis area" superimposed over the Grade A WTTV contour. A copy of that sketch follows here as Figure 1. The sketch revealed four problems with the area:

1) The area consisted of two separated elements, the city of Indianapolis plus all contiguous counties and then, standing alone, the city of Bloomington.

2) Thus, the area excluded Monroe County, of which Bloomington is the county seat. Bloomington and the rest of Monroe County make up the Bloomington SMSA.

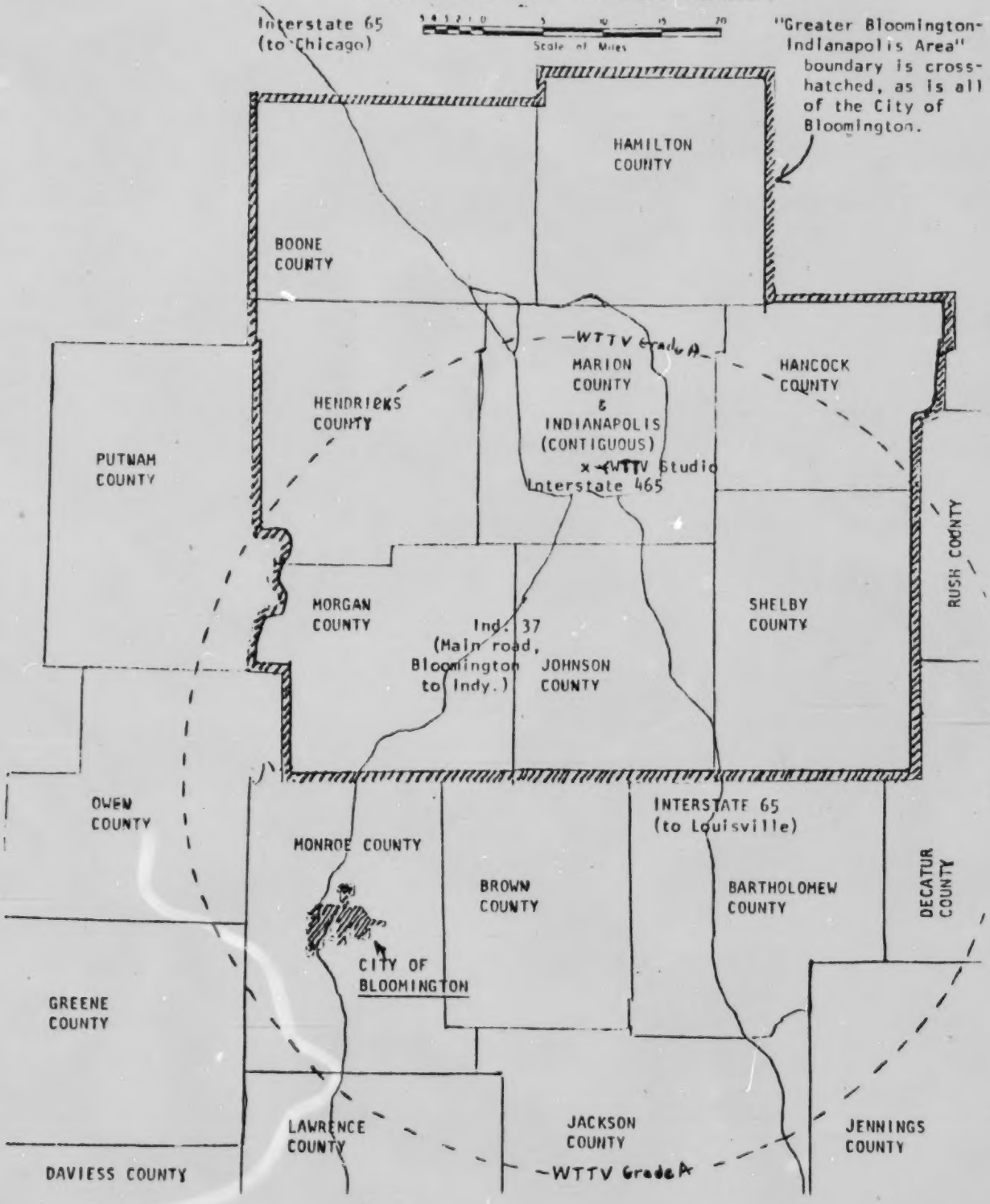
3) WTTV did not throw a Grade A contour over two counties that it included in the area it "primarily intended to serve" but...

4) Did throw a Grade A contour over two counties excluded from that area. WTTV was the only station that placed a Grade A signal over all of those counties.

With the map in mind, the Petition urged the FCC to conclude that Teleco had ignored the separateness of Bloomington from Indianapolis, just as the FCC had earlier concluded that McLendon ignored the fact that Camden was separate from Philadelphia. The Petition argued that, in addition to the map showing the gerrymandered area, the Commission should note that the Bureau of the Census considered Bloomington distinct from Indianapolis by making it, in August, 1975, a separate SMSA; that the two communities were about 50 miles apart; and that information from the Indiana Employment Security Division showed that of 28,691 workers in Monroe County during the 1970 census, just 712 went from Monroe County into any other part of Teleco's "Greater Bloomington-Indianapolis Area" to work.

With somewhat less faith in its persuasive value, the Petition asked the Commission to investigate what had originally interested the author in the transfer, the huge sale price. This factor had been considered in City of Camden where the FCC took note that the sale price seemed to be higher than the Camden market could support. That case explored whether "revenue sources of a proposed operation" were sufficient to determine "whether a

FIGURE 1: The alleged "greater Bloomington--Indianapolis area" (Teleco App., Exhibit IV-1, p. 1); Indiana Counties proposed not to be served by Teleco; location of WTTV Indianapolis Studio and WTTV Grade A Contour.



station will be operated realistically for its specified community or for the entire metropolitan area." City of Camden, 16 RR 2d 555, 572 (1969). The WTTV Petition to Deny argued that with the $26,450,000 sale price, of which $22,400,000 would be raised through loans and notes, the station would have to concentrate on Indianapolis rather than Bloomington which simply could not produce sufficient advertising revenue to retire the debt. Unfortunately it is very difficult to raise this issue with precision since much of the detailed financial information about a station that would be useful in arguing it is treated as a confidential matter between licensees and the Commission. The Petition could do little more than assert that the price was obviously a substantial one, inappropriate for a Bloomington station, and urge that the FCC investigate its effects on Bloomington service.

In the end, City of Camden was decided against McLendon when the FCC concluded that his ascertainment of community needs, although flawed, showed a Philadelphia bias. The author argued that such a bias was apparent in what he believed to be a flawed Teleco ascertainment. Ascertainment issues, then, constituted the second major set of allegations made in the Petition to Deny.

ISSUE 2: That Teleco's Ascertainment in Procedurally Deficient, Is Biased towards Indianapolis, and Ignores Important Communities within its Claimed Primary Service Area.

The FCC has long had a general requirement that licensees and proposed licensees know the problems, needs and interests of their communities and program to meet those problems and needs. In 1971, seeking to formalize those requirements, the FCC issued a Primer on Ascertainment of Community Needs which provided rather explicit guidelines on the conduct of community ascertainments. Primer on Ascertainment of Community Problems, 21 RR 2d 1507, 1541 (1971). This 1971 primer at first applied to all licensing situations; new licenses, renewals and transfers. In 1975 the Commission released a revised primer for renewal applicants [Ascertainment Guidelines, 35 RR 2d

1555, 1583 (1975)] but kept the 1971 standards in place for new stations and for what it considered the analogous case of transfers.

The Petition to Deny argued that, in numerous ways, the Teleco ascertainment failed to meet the standards of the applicable 1971 primer representing, instead, "a strange amalgum of notions, often incorrectly done, from both the 1971 Ascertainment Primer and the 1975 Renewal Primer." (Terry petition, p. 31). Six specific objections were raised to the Teleco ascertainment. The first was that Teleco had not provided the names and job titles of the persons who conducted the interviews, making it impossible to determine whether or not the interviewers had been principals and management level personnel as the 1971 Primer required. The Petition cited numerous cases where the FCC had disapproved other ascertainments for lack of this information. Second, the Petition complained that the names and titles, at least, of interviewees who were claimed to be "community leaders" were also required and that, in many instances, it would probably be necessary to provide at least a brief explanation of why some of the persons selected were determine to be leaders. Numerous cases were again cited for the proposition that this information had to be provided so that the FCC and any interested citizens could determine that all significant community institutions had been interviewed and that those interviewed were not just ordinary citizens but were truly leaders.

Third, the Petition alleged that Teleco admitted it had ignored three significant Bloomington community groups. Teleco left itself readily open to this charge. The FCC's 1975 Renewal Primer produced what is commonly known as a "Community Leader Checklist." That checklist lists 19 types of leaders (e.g., agriculture, business, charities...) found in most communities and asks renewal applicants simply to indicate how many leaders in each

category have been included in the ascertainment. The Commission's cases reveal that the FCC almost never argues with a licensee about whether or not the "right" leaders in each category have been interviewed: but the Commission does assume that there will nearly always be at least one leader in each category in a community. At the very least, the Commission expects explanations when it is claimed that a category of leader is not to be found in a community.

There is nothing wrong with using the checklist, or other elements of the 1975 Renewal Primer, as a guide for how to improve a transfer ascertainment, Teleco, however, submitted four community leader checklists (Bloomington, Indianapolis, "Contiguous Areas" and "Composite") rather than, as the 1971 standards required, actually submitting the list of the leaders with adequate description of each to justify their claimed leadership role. To the author's surprise, Teleco put "0's" in the Bloomington Community Leader Checklist under the categories of Consumer Services, Environment and Military. The author argued, in the Petition to Deny, that leaders from those elements in the community could be found and that failure to locate them in Bloomington -- while finding similar leaders in Indianapolis -- was further interest of a bias towards Indianapolis. To support the claim that such leaders existed, the author submitted two types of exhibits to the Petition to Deny. First, there were five affidavits and one letter from people the author thought were likely consumer affairs, environment and military leaders. The affidavits explained what group the person led, the general interests of that group, and that the person who signed the affidavit had not been contacted for ascertainment purposes. The text of the Petition to Deny contained more information about the groups, and a bit about recent consumer affairs, environmental and military issues in Bloomington. Also submitted was a community leader checklist from the

public files of Bloomington radio stations WTTS/WGTC covering the April 1, 1976 through March 31, 1977 time period. During that time, those stations -- owned, also, by Sarkes Tarzian, had interviewed two leaders for each of the three groups where Teleco had entered its "0's."

The fourth alleged error in Teleco's ascertainment was, to the author, always the most interesting one. It concerned the methods used by Teleco to analyze the data gathered from the community leaders who were interviewed. It was one of those issues that the author regarded as a "red flag" statement to someone known to be concerned about Bloomington service. The basic position of the Petition to Deny was that a station should place its primary ascertainment effort upon its community of license but that Teleco had handled its community leader ascertainment data so that Indianapolis had become primary and Bloomington only secondary. In part this could be found in Teleco's failure to locate Bloomington consumer affairs, environmental and military affairs leaders. The issue was clearest, however, in one of the most astonishing statements in the Teleco application. As required, Teleco had listed and summarized the results of its community leader ascertainment. The number one community leader problem, however, was described as the decay of downtown Indianapolis -- some 50 miles from Bloomington, the city of license!

> (1) Civic Pride and Downtown Revitalization (106). Many leaders expressed hope that downtown Indianapolis, which has declined as more and more residents moved into outlying areas served by shopping centers and branch stores and offices, could be restored to its old vigor and importance as the commercial and entertainment center of the city. Civic pride generally was seen as urgently needed to spur local officials to action on urban improvement in many areas. Teleco Application, Exhibit IV-1, p. 13.

It wasn't hard to figure out how Teleco reached this astonishing conclusion. In the application, Teleco claimed to have interviewed 77 Bloomington leaders, 134 Indianapolis leaders and 24 leaders from contiguous

areas. It then combined, with equal weight, all the 235 interviews. Predictably, then, Indianapolis dominated and the decay of downtown Indianapolis came out as the number one community leader problem -- and the only problem mentioned by Teleco keyed to a particular community. Since programming is supposed to flow from the analysis of community problems and needs, the Petition argued that Bloomington's needs would not be met by Teleco's programming. The Petition also alleged that devoting 16 lines to the compositional study of both Bloomington and Indianapolis, 55 lines solely to Bloomington but 155 solely to Indianapolis also showed that Teleco devoted more attention to Indianapolis than Bloomington. This, however, was almost a throw-away issue, never expected to be as persuasive as the way Teleco had treated its community leader interview data.

The fifth major criticism of Teleco's ascertainment was that it had ascertained too few leaders from either Bloomington or Indianapolis to really know the problems, needs and interests of those communities. The FCC has never approached this question of quantity of required interviews from the rigor of a social scientist. Rather, with the 1975 Renewal Primer, it simply gave numerical guidelines, keyed to community size, as to how many interviews were, as the broadcasting industry almost always puts it, enough. For a town of Bloomington's size, about 45,900, the FCC suggests at least 100 community leader interviews. For the largest communities, like Indianapolis, the minimum recommended number is 220. Fewer interviews are appropriate, but require a specific showing that they are still adequate for the community. Teleco, as noted, did a total of 235 interviews and appeared to try to come just over the recommended 220 which it argued was appropriate for the entire service area. The Petition to Deny argued that the FCC standards were for communities, not the entire service area, and that the 77 Bloomington interviews

fell well short of the expected 100 interviews. Teleco later argued that Terry wanted it to do 100 Bloomington interviews plus 220 Indianapolis interviews. That, however, was not the case. Terry merely argued that the city of license should be adequately ascertained with at least 100 interviews. So far as he was concerned, Teleco could do less than 220 in Indianapolis since licensees have only a secondary duty to ascertain outside their city of license. To demonstrate that there were probably more than 100 worthy community leaders in Bloomington, Terry attached -- again as Exhibits -- the lists of community leaders prepared by WTTS/WGTC for their 1976 renewal. That list included 137 Bloomington leaders, and also showed how at least a brief description was sometimes required to justify some of the interviewees whose leadership position was not apparent from their title.

Finally, recognizing that the complaints about Bloomington ascertainment issues might fail, Terry argued that Teleco had not complied with FCC policies for ascertainment of major communities (other than Bloomington or Indianapolis) within their service area. The Petition claimed that the FCC expected licensees to ascertain, in a minimal fashion, those communities of over 10,000 population within 75 miles of the transmitter site, or at least explain why they had not been ascertained. Based on the somewhat incomplete information on the "contiguous areas" that Teleco supplied, the Petition argued that it was likely that seven such communities had been ignored. One was argued to be of particular importance because it received Grade A service only from WTTV and, barely, from one Indianapolis network affiliated station.

ISSUE 3: That Teleco, Inc. rather than Teleco Indiana, Inc. Should be Considered the True Assignee and that, accordingly, the Application violated the Limits on Alien Ownership of the Communications Act.

The third major set of complaints in the Petition to Deny was that the application failed to meet standards in the Communications Act pertaining to alien (foreign) ownership. The Act blocks grant of a broadcast license to any corporation with more than 20% foreign ownership or any foreign directors [§310(a)(4)]. Since Teleco, Inc. had at least 23.98% Canadian ownership, and two Canadian directors, everyone agreed that it could not hold the WTTV license. The real issue, however, was whether Teleco Indiana, Inc., a claimed Teleco subsidiary, could be the licensee. Section 310(a)(5) of the Act blocks grant of a broadcast license to any subsidiary of a corporation with more than 25% foreign ownership but is unconcerned about foreign directors. It was obvious that Teleco Indiana, Inc. had been designated the assignee because of these limits.

The Petition argued that the FCC should treat Teleco, Inc. as the true assignee and called Teleco Indiana, Inc, only a "dummy corporation" created "in a rather transparent effort to defeat Congressional (sic.) mandated policies on alien ownership." (Terry Petition, p. 45). It further called Teleco Indiana, Inc. "a rather artlessly created alter-ego for Teleco, Inc." and urged that the Commission consider Teleco, Inc. the assignee. (Id.) The Petition advanced three arguments for this view of the Teleco, Inc. -- Teleco Indiana, Inc. relationship. First, Teleco Indiana, Inc. had not even existed on July 7, 1977 when Teleco, Inc. bought WTTV, contingent on FCC approval, from Sarkes Tarzian, Inc. The sale contracts were between Teleco, Inc. and Sarkes Tarzian, Inc., so that an effort was being made to grant the license to a company that did not own the station. Second, the two companies were completely overlapping: "Teleco, Inc. has no other subsidiary...and Teleco Indiana, Inc. has no other interests than this WTTV purchase. Teleco Indiana, Inc. is wholly owned by Teleco, Inc. All voting directors of Teleco Indiana, Inc. are also

directors of Teleco, Inc." (Terry petition, p. 46). Finally, Teleco had, perhaps carelessly, submitted a balance sheet for Teleco, Inc. at a point in the application calling for "a projected balance sheet showing assignee's financial condition after giving effect to the provisions involved in this application..." If, as claimed, Teleco Indiana, Inc. was the assignee, then its balance, not Teleco, Inc's, should have been submitted. Teleco Indiana, Inc., appeared, however, to have no assets. At this point in the Petition, a footnote observed that there was even some question whether Teleco Indiana, Inc. existed under Indiana law as there was no evidence that it had received at least $1000 for its shares, as was required by law, before it could engage in business operations. This, the Petition argued, meant that it was Teleco, Inc., and not Teleco Indiana, Inc. that had prepared and submitted the application for assignment.

ISSUE 4: That there had been an Unauthorized Transfer of Control of WTTV from Sarkes Tarzian, Inc. to Teleco Indiana, Inc. without FCC Approval.

The fourth major set of allegations in the Petition to Deny, that of an unauthorized transfer of control, was based on three charges. The FCC, of course, requires licensees to retain full control of their stations until assignment of the transfer of license is granted and takes unauthorized transfer of control most seriously. The three central allegations were, first, that Grace's parking lot remark that he had "authorized" circular polarization for WTTV demonstrated that Teleco, Inc. had acquired unauthorized control; second, that an unauthorized transfer occurred when Teleco, Inc. designated Elmer Snow, WTTV's General Manager under Sarkes Tarzian, Inc. as Teleco, Inc.'s Indiana agent and third, that an unauthorized transfer occurred when Teleco directed Sarkes Tarzian employees in the conduct of 101 of the 235 community leader interviews. The Petition complained, relevant to Snow,

that it was "hard for any man to serve two masters" and that the situation was not one of the proper "arm's-length relationship" between assignors and assignees. (Terry Petition, p. 47-48).

ISSUE 5: That Sarkes Tarzian had Unlawfully Moved the WTTV Studios from Bloomington to Indianapolis without FCC Approval.

Allegations that Sarkes Tarzian had unlawfully moved its main studios from Bloomington to Indianapolis made up the fifth major set of complaints in the Petition to Deny. Section 73.613(a) of the FCC's rules require licensees to maintain main studios inside the corporate limits of the community of license but, perhaps unfortunately, does not clearly define a "main studio." Teleco Indiana, Inc. and Sarkes Tarzian, Inc. simply stated, in the application, that the Bloomington studios would be the main studio location. The Petition to Deny, however, introduced evidence designed to challenge that assertion.

The sale contract for the Indianapolis facilities, included in the Sarkes Tarzian portion of the application for transfer, indicated that Teleco, Inc. was purchasing a building of 19,771 square feet. It then agreed to lease-back 2,205 square feet to Sarkes Tarzian, Inc. for use of WATI radio, a property Tarzian retained. As a result, 17,566 square feet were available in Indianapolis for WTTV's claimed "auxiliary studio." The Bloomington agreement did not disclose the size of the Bloomington facilities. To learn that information, Terry obtained the official building record from the Perry Township Assessor's office and submitted it as yet another exhibit to the Petition to Deny. That record showed a building of 7,766 square feet plus a partial and unfinished basement. From this, one could show that the Indianapolis "auxiliary studio" had 2.26 times the square footage of the Bloomington "main studio." The Petition to Deny

also noted that WTTV's executives -- General Manager, Promotion Manager, Program Manager, Operating Manager, General Sales Manager and News Director -- were all located at the Indianapolis "auxiliary" studio. Finally, recognizing that the FCC also used programming source in its definitions, by case law, of radio and TV main studios, the Petition generally claimed that the Commission's standards in Nationwide Communication, Inc., 16 RR 2d 554 (1969) appeared not to be met. The Petition claimed that Nationwide was the best case guide to the definition of a TV main studio. It involved a network-affiliated TV station, and said that the main studio was that studio from which more than 50% of all non-network programming originated. For an independent station like WTTV, the main studio would accordingly be the place where at least half of all programming originated, except for what little network programming the station might pick up if declined by the normal Indianapolis network affiliate. The Petition to Deny characterized another case, Ponce Television Corp., 16 RR 2d 807 (1969) as in a special class because it involved Puerto Rico and the special problems of availability of Spanish language programming.

This programming aspect of the main studio issue, however, was only developed lightly in the Petition to Deny for two reasons. One was philosophical, the other quite strategic. The philosophical reason was that, so far as possible, the author wanted this Petition to Deny to be argued in content-neutral terms (e.g., the size of the buildings), as he has serious reservations about direct FCC involvement in programming regulation. If programming got deeply into the controversy, the author wanted that to be done by the broadcast parties to the case. If they chose not to pursue it, then the author intended also to leave it alone.

Strategically, however, the author expected both Teleco, Inc. and Sarkes Tarzian, Inc. to bring programming arguments into the dispute with

their Oppositions to the Petition to Deny. He certainly expected Sarkes Tarzian to respond to the main studio complaint by alleging substantial and meritorious Bloomington programming. Given the FCC's procedures, he knew that his own Reply to their Oppositions could then move into programming issues. Saving his own comments on programming (1) was consistent with his views of the First Amendment, (2) would give the author the last word on those issues since his reply would be the last pleading filed and (3) also gave him more time to examine the rather sketchy WTTV program logs. So, at this point, the Petition to Deny only argued issues of studio size and location of executive location at any length. It asked, at least, that the Commission impose reporting requirements on Teleco, Inc. -- should the license be granted -- to assure that, as Nationwide required, at least 50% of all non-network programming originated from Bloomington. To many of the author's Bloomington advisers, this was one of the most important issues in the Petition to Deny because, in order to fulfill it, Teleco would have had to substantially increase the size of the Bloomington studios, hire new employees, and become more than a petty contributor to the Bloomington economy. Those advisers hoped it would open up their use of WTTV as an advertising vehicle and, as well, improve news and public affairs service to the community.

ISSUE 6: That the FCC should Examine the Effects of the Waiver of the Station ID Rule, Permitting WTTV a Dual ID, Upon Service to Bloomington.

The final set of allegations asked the Commission to investigate whether, if the transfer was approved, Teleco Indiana, Inc. should continue to enjoy a waiver of the FCC's station ID rules that Sarkes Tarzian had obtained in 1959 to permit dual ID of the station as "Bloomington-Indianapolis." The Petition to Deny alleged that this limited Indianapolis identification drew the station away from a Bloomington identity and had several deleterious

effects and that it should be investigated because conditions had changed since 1959. Four things were argued to have changed substantially. First, Bloomington had grown from 28,163 persons when the waiver was granted to 45,900 in 1977, suggesting that its ability to economically support a TV station had increased. Second, the FCC staff had told the author (incorrectly, it turned out) that the 1959 waiver had been granted because Sarkes Tarzian threw a city grade signal over all of Bloomington and all of Indianapolis. In 1970, Indianapolis and most of Marion County merged -- under the UniGov plan -- with the result that WTTV no longer placed even a Grade A signal over all of Indianapolis. In addition, FCC policy appeared to be not to grant dual ID's that cut across two SMSA's, and Bloomington gained SMSA status in 1975. Third, the Petition to Deny argued that the ID waiver undercut FCC UHF-TV policies. A UHF-Independent TV station, WHMB-TV, had been established in 1971. The Petition alleged that WTTV's ability to identify with the Indianapolis area, and attract advertising, had an adverse effect upon the economic viability of a station such as WHMB-TV. Finally, the Petition noted that Sarkes Tarzian had substantial local ties plus a history of attempting to serve Bloomington when the Commission granted the waiver in 1959 whereas, in 1977, Teleco "has no Bloomington interests, no Bloomington (or even Indiana) investors and, of course, no history of attempting to serve Bloomington." (Terry Petition, p. 53).

Exhibits were attached to show some of the "deleterious effects." They were admitted to be, in themselves, not unlawful. The exhibits included copies of the "Pre-filing" and "Post-filing" notices broadcast by WTTV in connection with its 1976 license renewal. The last paragraphs of these notices listed only the Indianapolis studios as places where information about the WTTV renewal could be obtained. Another exhibit was

the Sarkes Tarzian, Inc. invoice given the author when he purchased a copy of the Sarkes Tarzian and Teleco applications for transfer. The invoice credited payment to "WTTV-TV, Indianapolis." Finally, in part because it made a dramatic close, the Petition to Deny included three photos. One was of the Bloomington "main" studios, a rather forelorn shot but the best of three the author attempted. The other photos grew from an Indiana University - Michigan State football game on October 15, 1977 -- just two days before the Petition to Deny was filed. Channel 4 brought their then-new mobile truck to Bloomington to cover the game. It was parked outside the Indiana University stadium and, in letters about three feet high, proclaimed "WTTV 4, Indianapolis, Indiana." The text of the Petition noted, then, "that WTTV pulled a huge mobile van into Bloomington, its community of license, proudly announcing "WTTV 4, Indianapolis, Indiana. One of the Nation's Leading Television Stations." (Terry Petition, p. 54).

With a few further comments urging the Commission to act quickly, and promising to readily meet FCC deadlines for any Reply to the expected Oppositions, the Petition to Deny closed. It became the turn of Sarkes Tarzian, Inc. and Teleco Indiana, Inc. to respond.

TELECO INDIANA, INC. AND SARKES TARZIAN, INC. FILE OPPOSITIONS.

Once a Petition to Deny is filed, FCC rules provide for Oppositions from the parties to the case and, then, for a Reply to those Oppositions by the original petitioner to deny. No other pleadings or filings are permitted. The author somewhat underestimated what would happen with the Oppositions. He had not forgotten that there were two broadcast parties to the case -- Teleco Indiana, Inc. and Sarkes Tarzian, Inc. -- but it hadn't quite occurred to him how different this would make things, for example, from a Petition to

Deny a renewal application. Petitions to Deny renewals invoke the wrath of just one law firm. Here, Terry was opposed by two very well-known, large DC law firms who, to some extent, divided the task of opposing the Petition to Deny. By the time it was all over, the author had dealt with five attorneys: two for Teleco Indiana, Inc. and three for Sarkes Tarzian, Inc. Keeping up with the workproduct of that many attorneys was a little more than the author had anticipated.

For one thing, he had misread the FCC's rules about due dates for the Oppositions. He thought the broadcasters would have 30 days to file their oppositions, as would be true of a Petition to Deny a renewal. The FCC's transfer rules, however, called for a response within 13 days, which meant that Oppositions were due October 31, 1977. Regardless of the size and resources of the firm, nobody would have met those dates and indeed both of the broadcast parties requested extensions of time of the author. Martin Gaynes, of Cohn and Marks, asked on October 24th for a week's extension. Since Terry thought the broadcasters would have a month anyway, he had no objection. On the 25th, attorneys for both Sarkes Tarzian, Inc. and Teleco Indiana, Inc. filed letters with the FCC asking for the extension of time and noting that the Petitioner to Deny had no objection. Sarkes Tarzian's request was based on the length of the Petition to Deny, plus its exhibits, and the need of the attorney to get some material for the Opposition from the FCC's archives. Teleco also based its request on the length of the Petition, but in addition cited "time delays associated with communications with principals of our client who are not located within the Washington area." As a result of these requests, the new due date for the Oppositions was November 7, 1977 -- a date met by both parties with extensive documents. At the same time, Teleco Indiana, Inc. filed several important amendments to its original portion of the transfer application.

Both parties had complained about, or commented upon, the length of the Petition to Deny -- but when it came to submitting Oppositions, the law firms were no more parsimonious that the author. Tarzian's opposition was but 28 pages long, with an additional 171 pages of appendices, certificates of service and affidavits making a total of 199 pages. Teleco's Opposition, including certificates of service and affidavits, was 45 pages long, but the simultaneously submitted amendments added an additional 58 pages for a total, in effect, of 103 pages. The 116 page Petition to Deny, then, generated 302 pages of opposition which, in turn, resulted in a 62 page Reply by the author.

Under the rules, a Reply to the Oppositions was due five days following their filing with the Commission, plus three days for service by mail, excluding holidays and weekends. That made the Reply due on November 17th, only ten days after the Oppositions reached the FCC. Mainly as a matter of personal pride, and also to demonstrate that he had no desire to be unnecessarily disruptive, the author promised himself to somehow meet that deadline, although he was sure that -- on a tit-for-tat basis -- the attorneys for the broadcasters would have given him a short extension on request. Before discussing the substance of the Oppositions and Reply, there's some value in explaining how it was managed to get the Reply to the FCC by that November 17th deadline, for it demonstrates some of the difficulties for an academic Petitioner to Deny located some 700 miles from Washington, DC.

There's no doubt that the five day response rule is designed for parties in Washington or at least with Washington counsel. Even with the extra time for service by mail, ten days is not long to respond to any well-drafted legal document -- particularly on a part-time basis. As the time was short, the author wanted to get as much of the extra "service

by mail" time as he could for use in preparing the Reply. Fortunately, the author was teaching an introductory graduate research methods course the same semester as these WTTV activities. He had planned to take some of those students to Washington, DC for research on the public's reaction to the FCC's Consumer Assistance Office. That trip could be arranged to coincide with the November 7th filing of the Oppositions by the law firms. Thus, it was possible to pick up copies of the Oppositions directly from the law firms -- and meet the attorneys face-to-face for the first time -- during the week of November 7.[12] There was also the chance to consult with Washington DC advisers, notably Ed Kuhlman at Citizens, before drafting the Reply. The author mentally sketched out his Reply while driving back from Washington and was able to actually write it November 15th and 16th. It was typed the night of the 16th and morning of the 17th, under slightly less pressure than the original Petition to Deny with the result that it contained fewer typing errors, and placed on a plane for Washington that morning. It was delivered, by a friend, to the Commission at 11:30 a.m. The author subsequently heard that one of the attorneys for the broadcasters, at a DC party, expressed his astonishment that the deadline could have been met by somebody working from Indiana. The author is sure the attorneys believe he had secretarial and research assistance, and will probably never convince them that he did not.

To save space here the November 7 Oppositions and the November 17 Reply can be jointly discussed.[13] Since for the most part Teleco and Sarkes Tarzian disputed the author's interpretation of the law and facts

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12. The author's records do not indicate the exact dates he picked up the Oppositions. It was probably either November 8 or 9.

13. The reader may wish to consult again the "Summary of Issues" at p. 27 supra.

already in the record, the only need was for legal research to reply to their Oppositions. To the author's surprise, the firms adopted quite different tones in their responses. It's a subjective judgment, but Tarzian's response, prepared by Gaynes, seemed cool and non-emotional. It struck the author as a dispassioned disagreement with the author over the points raised in the Petition to Deny. At times it was even complementary as, for example, when it admitted that "Professor Terry...obviously has a deep interest in communications policy generally as a professor at Indiana University" while at the same time arguing that he should not have standing to file the Petition to Deny (Tarzian Opposition, p. 2, n. 1). Teleco's Opposition seemed more emotional and prone to personal criticism of the author than Tarzian's. For example, Teleco stated its belief that the author "relies on allegations totally lacking in substance, repeatedly references cases which are irrelevant to this issue and misinterprets those legal principles which are of relevance." (Teleco Opposition, p. 4). Later Teleco called the author's reading of cases pertaining to the Suburban Community issue "tortured, and at times wholly fallacious..." (Id., p. 7) and, still later in the Opposition, protested that on the alien ownership issue, the Petitioner was just "picking at nits." (Id., p. 30). The author's wife was offended by the tone of the Teleco Opposition -- she called it "nasty." To the author it was understandable for, after all, he was disrupting a $26,450,000 business deal, had occasionally engaged in a bit of hyperbole himself in the Petition to Deny, and expected to get some personal criticism. He was struck, however, that the two firms would adopt such clearly different tones in trying to achieve the same objective of convincing the FCC that the Petition to Deny was without merit.

Terry was not at all surprised that both Tarzian and Teleco attacked his standing to file the Petition to Deny. Teleco devoted just over two

pages to the standing issue, Sarkes Tarzian gave it a half-page, single-spaced footnote. Tarzian conceded that the Commission would treat the document on its merits as an informal complaint even if standing were denied; Teleco made no such admission. Both claimed that standing should be denied because the author had made no showing of how he would suffer a special injury from grant of the transfer. The author spent four pages in the Reply rearguing the proposition that a single person, without a supporting group, could file a Petition to Deny (an issue also attacked by the broadcasters), that the FCC had for practical purposes abandoned the need to prove special injury to gain standing but that the Petition to Deny, in any event, had alleged and demonstrated such injury in any event. The more interesting portions of the Oppositions and the Reply, naturally, dealt with the broadcasters attack upon the substance of the author's challenge to the WTTV sale.

Teleco argued, most vigorously, that the author's efforts to relate City of Camden to the WTTV proceeding were in error. Its argument was that the Commission's Suburban Community Policy was a radio, and not a TV, policy, could not apply in television where stations were assigned to specific communities, and was not applicable at all in transfer proceedings. In the Reply, Terry argued that Teleco had been selective in its editing of cases and that, even when Teleco's cited cases were considered, the main elements of the policy cited in City of Camden could still be applied to transfers -- at worst, the Commission just had not decided whether or not to apply the policy to television but had left the issue open. Throughout the author felt that Teleco's use and editing of cases often left out important aspects of the materials upon which they relied and that, taken as a whole, many of their cases could be turned to Terry's advantage in Reply.

Teleco argued that the author wanted Teleco to abandon service to Indianapolis. The Reply stressed that that was not at all the intent, that the author admitted WTTV had obligations to Indianapolis, but that those obligations were secondary to obligations to Bloomington. To the author, it seemed that Teleco's Opposition came down to the argument that WTTV provided "primary" service to Bloomington so long as it did not exclude Bloomington from the primary service area. To Terry, this meant that Indianapolis would dominate Bloomington if both were given equal "primary" treatment.

As the author anticipated with filing the Petition to Deny, Sarkes Tarzian and Teleco both asked the FCC to examine past programming and programming plans. He was surprised, however, at the heavy degree to which the broadcasters invited FCC examination of programming as a defense against the Petition to Deny. Before long, the author's Reply turned into an unanticipated defense of the First Amendment rights of broadcasters. Teleco argued that its programming proposals were generous to Bloomington and would clearly provide appropriate programming. Sarkes Tarzian argued that its past programming, exhaustively detailed in a series of appendices to their Opposition, showed that the city of license had not been slighted and that the main studio had not been moved without authorization. In response to this heavy reliance upon programming analysis by the broadcasters, the author reiterated his preference for content-neutral decision of the case, explained that he had not deeply discussed Teleco's programming proposals in the Petition to Deny because he believed them to flow from a faulty ascertainment of community needs -- something he still believed to be so -- but then moved to a limited criticism of the programming proposals. His major complaint was that Teleco's plans provided for little news, as opposed to public affairs, programming from Bloomington. Most of the

Bloomington programming was classifiable as public affairs. So far as could be determined, news from Bloomington would be limited to half of a promised six live news inserts promised by Teleco. Since the news inserts were only described as being "not less than one minute in length," one could logically suspect that this new news programming from Bloomington would amount to only an insubstantial three minutes. In any event, the entire Bloomington news staff -- the staff covering the city of license -- would still consist of just one part-time reporter/cameraperson. Teleco's Opposition also argued that its programming would address ascertained Bloomington problems and needs. In his Reply, the author argued that Teleco had failed to link, as the FCC required, specific programming plans to specific ascertained needs and that, in general, Teleco had made only a vague assertion that programming would relate to ascertained problems and needs. The main point, in the author's mind, was that all this was not really relevant as the Teleco ascertainment remained flawed.

Teleco's amendments amounted to a practical concession that Terry's criticisms of the original ascertainment had identified some serious problems. The 58 pages of amendments were designed to serve two functions. First, they notified the FCC of changes in the pattern of Canadian investment. The effect of those changes will be discussed shortly. Second, the amendments were patently designed to remedy some serious problems with the original ascertainment: the failure to list interviewers, to list and justify interviewees, and the failure to interview consumer affairs, environmental and military leaders from Bloomington.

The author expected Teleco to amend in the ascertainment area. In fact, the original Petition to Deny noted that Teleco was "entitled to a limited [emphasis in the original] opportunity to upgrade its ascertainment

(Stone v. FCC, 24 RR 2d 2105 (CADC, 1972)," and anticipated that they would try to do so. (Terry Petition, p. 32). Teleco's amendment: (1) at last identified the interviewers, (2) identified the interviewees and (3) claimed that additional interviews had been made with Bloomington consumer affairs, environmental and military leaders. In his Reply, however, the author argued that the ascertainment remained flawed and that the amendment should be rejected under a Court of Appeals' clarification of the Stone case. Stone v. FCC, 25 RR 2d 2001 (CADC, 1972).

Teleco claimed that the author wanted it to devote most of its ascertainment efforts to Bloomington. Terry replied that he had not asked for that at all -- that 100 community leader interviews in Bloomington and 220 in Indianapolis would be fine -- but that, instead, the major problem was not "in the number of interviews in each community but in the combining and handling of the data obtained." (Reply, p. 22). The Teleco Opposition and the Terry Reply, then, boiled down to a disagreement over how the FCC expected ascertainment data to be analysed. Teleco's position, based largely on its idea that it provided primary service to Bloomington so long as it did not exclude Bloomington from its primary service area, was that it was quite proper to combine Bloomington and Indianapolis interview data with equal weight. In fact, Teleco argued that it overweighted Bloomington because it interviewed one Bloomington leader for every 525 residents but used a ratio of 1:5,515 for Indianapolis (Teleco Opposition, p. 20). Terry maintained, in his Reply, that the equally-weighted mixture of 77 Bloomington leaders, 134 Indianapolis leaders and 24 "contiguous area" leaders, on its face, subordinated Bloomington to Indianapolis. In fact, Teleco's Opposition revealed information that strengthened the author's argument.

In its amendment, Teleco broke listed community leader problems down into separate -- and rankable (although Teleco did not provide the ranks) --

Bloomington and Indianapolis lists. From that, it was possible to see clearly how the decay of downtown Indianapolis became the number one community leader problem: it was mentioned by 92 Indianapolis leaders and ranked a clear first among their listed problems. Civic pride and downtown revitalization (most likely meaning downtown Bloomington) was mentioned by only eight Bloomington leaders and ranked 12th among 29 Bloomington problems. Combining Bloomington and Indianapolis problems as Teleco had done clearly had the effect of Indianapolis priorities to dominate and distort Bloomington priorities. The author's Reply (at p. 24) pointed out what happened to Bloomington's "top three" problems on the composite Teleco list:

Problem:	Rank Among Bloomington Leaders	Rank on Composite List
Government Inefficiency	1	5
Economic growth	2	14
Communication	3	9

In Opposition, Teleco argued that Terry's errors were in thinking that Bloomington and Indianapolis were different, separate and isolated. Teleco claimed that Bloomington and Indianapolis were alike because similar problems turned up on the Bloomington and Indianapolis ascertainment lists. Terry's Reply argued that even though similar problems appeared, they were ranked differently by the leaders of the two communities. To make that point, the author ran a Kendall ranked order correlation between the two lists, which turned up a -.2297 correlation, significant at .031. The Reply, for the benefit of the non-statisticians, explained that...

> In English, this means...there is almost no correlation, no relationship, between community problems as ranked by Bloomington leaders and as ranked by Indianapolis leaders. What little relationship there is is a negative one, meaning

> that Bloomington and Indianapolis leaders tend to see things slightly in opposite ways...Furthermore, we are even very sure of this, for the .031 figure means there are only about 3 chances in 100 that this finding of no relationship -- or a slight negative relationship -- occurred by chance. Reply, p. 25.

Expecting even the FCC lawyers to be unsure of the statistics, a footnote advised that "(o)n the appropriateness of this statistic [as opposed to Spearman correlation] OPP [the Office of Plans and Policy] can advise the FCC." Id. The Reply rei terated, contrary to Teleco's Opposition, that there had still been too few interviews in Bloomington, arguing that numbers of interviews should certainly not be less for transferees than for renewal applicants, that the suggested minimums were, indeed, for the city of license and not the entire service area, and that, at best, Teleco had still failed to interview in at least one of the seven major communities with populations in excess of 10,000 but within 75 miles of the WTTV transmitter.

As already noted, Teleco tried to amend its application by submitting the names of interviewers, interviewees and by conducting additional Bloomington interviews. Teleco's excuse for its original submission without that information was a desire to "simplify and minimize the volume of material being submitted to the Commission by utilizing the 'Community Leader Checklist' created by the Commission in the Renewal Primer and by indicating the number of interviews which had been conducted by Teleco Indiana's proposed President, Chairman of the Board and certain shareholders and current management level personnel of Station WTTV who will be retained by Teleco Indiana." (Teleco Opposition, p. 25). Teleco then relegated to a footnote its admission that the information was at last being provided:

> 19/ To avoid any question whatsoever, the names of the interviewers and the interviewees are being filed concurrently herewith as an amendment to the pending application. (Id., p. 26).

Terry's Reply emphasized that the original failure to submit the information was a more serious problem than Teleco admitted but, more importantly, now argued that the Teleco amendment itself was inadequate to repair the failings of the ascertainment.

At this point, the Reply digressed at length about the meaning of the Stone case and its subsequent "clarification" for the right to amend an ascertainment after a Petition to Deny was filed. Teleco argued that the right was absolute (Teleco Opposition, p. 27, n. 22), but Terry believed that the stone clarification of September 1, 1972 limited the right to amend. Stone v. FCC, 25 RR 2d 2001 (CADC, 1972). Terry basically argued that the clarification stood for the proposition that a broadcast applicant could not just wait and see if a Petition to Deny was filed before correcting an ascertainment known to be faulty. The author argued that the September 23, 1977 letter to Grace put Teleco on notice of errors in the ascertainment and that changes should have been made then, not only after the Petition to Deny was filed. On this theory, the author urged the Commission to reject all the ascertainment amendments: the lists of interviewers and interviewees and the alleged new Bloomington interviews. As additional support for this position, the author argued that the Stone case involved a licensee caught in the middle of shifting ascertainment standards, while Teleco simply had to follow standards dating back to 1971. Finally, the author pointed out that Grace, who was responsible for the ascertainment, had been a radio station general manager from 1969 through 1974 or 1975 and should, from that experience, have been able to follow the 1971 ascertainment requirements.

Recognizing, however, that the Commission might accept the offered amendments, the Reply argued that they still did not correct the ascertainment. For one thing, numbers just did not add up consistently. Teleco at first claimed to have interviewed 235 community leaders. The amendment said there were 10 supplementary interviews, which should have brought the total to 245.

The amended list of community leaders said there were 240 interviews, meaning that there was confusion over whether five or ten new interviews had actually been conducted.

More telling, in the author's view, was Teleco's failure to update the tabulations of problems listed. The composite tabulated lists were less than the sum of the lists of Bloomington, Indianapolis and composite area problems submitted with the Teleco amendment. The tabulations were off by seven problems, including the only mentions of consumer protection -- four mentions from Bloomington. The author suggested, in the reply, a plausible explanation for all this:

> Teleco did five additional interviews in Bloomington, four of them mentioned consumer protection but their problems were not listed by Teleco and accordingly have not entered into the ascertainment or -- at least theoretically -- into the programming plans that are supposed to be derived from ascertainment. Bloomington has, again, been slighted. (Terry Reply, p. 35).

Terry claimed that it was also odd that Teleco had done at least some additional community leader interviews -- either five or ten from Bloomington -- but...

> has made no change in its programming proposals and has not even bothered to explain why no change was made. Theoretically these new interviews added something to Teleco's understanding of Bloomington problems, needs and interests. Teleco at least owes Petitioner and the Commission some indication of how it integrated these new perspectives with the programming proposals developed earlier. Absent this, Teleco's new interviews seem like future and unnecessary steps taken just to satisfy Petitioner and the FCC rather than to provide data essential for the development of programming plans reasonably related to the community of license. (Id., pp. 38-39.)

Finally, the author argued that 38 of the Bloomington interviewees should be struck because Teleco failed to adequately justify them as community leaders. The author cited the Review Board's decision in

St. Cross Broadcasting, 26 RR 2d 1311, 1312-1313 (1973):

> Mere membership in a profession, involvement in education, business or agriculture, or employment in government or social service do not automatically make an individual a "community leader." An applicant must make at least a minimal showing that either the interviewee is a leader of that group or organization of which he is a member, or that he, by virtue of his position or otherwise, should be considered a leader of some other portion of the community or of the community as a whole.

Teleco's list and description of Bloomington leaders was often quite sketchy -- the worse example being just "Roscoe Sexton, Businessman." Accordingly the author asked the FCC, if it accepted the amendments at all, to reject 38 of the Bloomington interviews and then find Teleco woefully short of a meaningful Bloomington ascertainment.

Teleco's opposition vigorously argued that the author's alien ownership complaints were unfounded and should be rejected. Along the way, however, the Opposition opened up an expansion of the issue and used a case that, in the author's view, weakened their argument somewhat. Teleco Indiana relegated to a footnote a point that the original Petition to Deny had also treated in a note: Teleco's failure to fully comply with Indiana requirements that a company sell $1,000 worth of stock before going into business. In its note, Teleco admitted that Teleco Indiana, Inc. had not done that yet, but promised the Commission that it would as soon as the FCC approved the transfer and put them in business. The author's reply expressed astonishment at this position, for to him it meant that Teleco, Inc. was asking the FCC to grant a license to a non-existent company and to approve an application prepared by a company that was patently not qualified to be a licensee. To the author, the alien ownership issue had almost become a "was there any owner" issue, for Teleco seemed to be trying to license a company that did not exist. Teleco argued this was a routine business practice, anticipated by the parties in their sale contracts.

As to the original alien ownership complaints, Teleco in Opposition cited a common carrier case, Glaser and Fletcher, 33 RR 2d 37 (1975) for an opinion that foreign ownership should not flow through from a parent corporation to subsidiaries. In Reply, the author admitted that Teleco's cited case might be somewhat pertinent -- if the subsidiary, Teleco Indiana, Inc. had existed -- but was quite factually different from Teleco's case where the alien most directly involved, Seymour Epstein, was a Canadian with substantial broadcast experience and Canadian media ownership interests. In fact, Teleco's amendments showed that Epstein, who owned just 35.1% of the Canadian held stock, had acquired control of 100% of it by being given 100% control of the voting stock of Cantel, Inc., a Michigan holding company created by the Canadian Teleco, Inc. investors. To the author, this should be a cause for substantial FCC concern. Moreover, the author argued that -- at the very least -- conditions that the FCC imposed in the case Teleco cited, Glaser and Fletcher, should be imposed here. In Glaser and Fletcher, the FCC rested its approval of the alien ownership upon the condition that the alien not become a director or officer of either the licensee or its parent corporation. Here, however, Teleco was clearly intending that Epstein remain a director of Teleco, Inc -- the parent.[14]

Sarkes Tarzian and Teleco shared responsibility for opposing the allegation of an unauthorized transfer of control. To Terry, Sarkes Tarzian, particularly, made a good case that WTTV had interests in circular polarization that predated the sale and that Grace really

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14. The author subsequently learned, from Epstein, of a marvelous human aspect to this part of the case. Canadians, apparently, do not use the term aliens to denote foreign nationals. Epstein's children interpreted these allegations about their father as being something out of Star Wars.

had "acquiesced in" rather than "authorized" the circular polarization of the transmission equipment. So, the author conceded in the Reply that Grace's parking lot remark did not indicate an unauthorized transfer of control. The Reply maintained, however, that neither Teleco nor Sarkes Tarzian had been able to discount the significance of the other two allegations in favor of an unauthorized transfer of control: the presence of Elmer Snow simultaneously as Sarkes Tarzian's general manager and Teleco's Indiana representative and Teleco's hand in directing community leader ascertainment interviews by Tarzian employees. Teleco argued that the Snow issue was unfounded as Snow was on neither the Teleco Indiana, Inc. nor Teleco, Inc. payrolls. Terry continued to assert that it was improper for Snow to act as Teleco's Indiana agent, whether salaried or not. Tarzian's Opposition included an ingenious hypothetical that Terry's reading of the unauthorized transfer of control would prohibit a station employee from remaining with a station that s/he had purchased. The author's Reply noted that the FCC's definition of control was a flexible one that could bend to meet particular cases, and that the Commission could approve of Tarzian's hypothetical without approving of what actually happend in the WTTV case because the designation of Snow as Teleco's Indiana agent was a voluntary act that could, and should, have been avoided. Teleco and Sarkes Tarzian offered almost identical oppositions to the author's claim that an unauthorized transfer of control occurred when Sarkes Tarzian employees conducted community leader interviews at Teleco's direction. Both argued that the FCC had authorized such interviews in Ascertainment of Community Problems by Broadcast Applicants, 39 RR 2d 213 (1976). To the author, that case didn't decide the issue at all, for there the FCC simply said that if a proposed assignor happened to have conducted a few interview

In anticipation of renewal, and if the interviewers would be retained by the proposed assignee, then the interviews could be "counted" in the transfer application. To Terry, it was a long jump from that to approving many interviews not conducted in anticipation of renewal but at the express direction of the proposed assignee.

Sarkes Tarzian's attorneys took the lead in refuting the allegation of an unauthorized main studio move;' Teleco just said it would operate the facilities as required by FCC rules and policies. Most all of the Sarkes Tarzian Opposition, in fact, was devoted to the main studio issue. There had long been a rumor in Bloomington (and in Washington, DC) that Tarzian anticipated a Petition to Deny, eventually, based on lack of service to Bloomington. The length and amount of supporting documentation, in the Tarzian Opposition, assembled against a short deadline, suggests that the rumor might have been accurate.

Tarzian's counsel made three main points. First, they argued that the present set-up was approved by the FCC in 1965 when the Commission caught Tarzian without any Bloomington studio but was then satisfied when the facilities still in use in 1977 were activated. Second, Tarzian argued that the Commission had previously found that arguments about the size of buildings did not determine main studio issues. Finally, Tarzian argued that the real determinant was amount of programming originating from the studio, that Terry had misread the FCC's policies in that respect, and that Tarzian complied with the true policies.

Terry's Reply to all this was first that the 1965 approval of the Commission to Tarzian's Bloomington studios (which Tarzian had shown by including the Commission letter settling the problem of Tarzian having no Bloomington studio at all), by its own terms, did not legitimate the 1965 facilities forever and had, in fact, been apparently premised on

WTTV's then weak financial picture. Second, Terry argued that Tarzian's cases demonstrated that studio size alone was not determinative of a main studio issue, but in fact did show that it was a factor to be considered. Finally, Terry argued that Tarzian's reading of the programming requirements was erroneous and based on weak precedent.

Tarzian's attorneys had let slip an interesting fact in their Opposition; that the Bloomington studios had just three full-time and 15 part-time employees. Terry always knew that there weren't many Bloomington employees but, at the time of filing the Petition to Deny, had been unable to prove how many there were as the FCC's procedures do not provide for any pre-Petition to Deny discovery. Once Tarzian revealed the number of Bloomington employees, it was possible to use the WTTV 1977 Annual Employment Report to show how employees were distributed between Bloomington and Indianapolis. The Reply (at p. 48) included the following table:

	Full Time	Part Time
Bloomington	3 (3%)	15 (44%)
Indianapolis	96 (97%)	19 (56%)
Total	99 (100%)	34 (100%)

This obviously enlarged the dispute over whether or not Bloomington was the "main" WTTV studio. The author's reply argued that the differences in studio size ("auxiliary studio" 2.26 times the size of the Bloomington studio) plus the fact that all station executives were at the "auxiliary studio," plus the fact that only 3% of the full-time workforce was at the Bloomington studio, ought to be determinative. Tarzian continued to argue, however, that the determinative issue was source of programming, so Terry had to respond to that argument despite his preference for deciding this point on content-neutral grounds.

Muddled would probably be the most appropriate word to use in describing the FCC's main studio policies for independent TV stations. No case, really, is squarely in point and as Terry and Tarzian argued about the issue they wandered off into strained interpretations of the law. Terry, it will be remembered, originally argued that Nationwide Communication established the Commission's policies and that Ponce Television was a special Puerto Rican case. Tarzian argued that Ponce was the standard, and that under it an independent operated a lawful main studio when it originated at least 50% of its non-commercial, non-entertainment programming from that site. For an independent, that was obviously less programming than Nationwide's 50% of all non-network programming standard.

In their Opposition, Tarzian's attorneys included a staff letter in Global Television, Inc. (September, 1975) to support their reliance on Ponce. Since the letter was unpublished, it had to be included as an exhibit. The letter did seem to say that an independent TV station had a lawful main studio when it originated 50% or more of non-entertainment, non-commercial programming from that site. To Terry, however, Global was a weak document to rely on for three reasons: 1) the company was a nonprofit corporation interested in using transcendental meditationists as employees -- certainly not the typical independent TV station; 2) the station was not on the air when the staff letter was issued, and never got on the air, meaning that the programming proposals upon which the letter was given were untested and 3) this was only a staff letter, not a Commission decision. Terry found a Commission decision which, at least by implication, undercut Global.

In International Panorama TV, Inc., 33 RR 2d 659 (1975), the Commission decided, six months prior to the Global staff letter, that an independent Spanish language TV station (on the air, at least) violated the

main studio rules when it moved its studios from North Hollywood to Santa Ana, CA without FCC approval. The Commission assessed a $5,000 forfeiture, which the licensee then argued should be mitigated because it had always been its intent to return to North Hollywood from which it would "program 51 percent of the overall operating hours-- computed over any reasonable period of time." (Id. at 660). The Commission refused to mitigate, saying that this statement in fact "further demonstrates its [the licensee's] prior familiarity with the main studio rule." (Id. at 661). From this, Terry argued that the Commission's standard was that independent non-network stations had to originate at least 50% of all non-entertainment programming from a studio for that to be claimed as the "main" studio, and that the staff had simply not understood the Commission's policies when it issued the Global letter.

Since Tarzian made so much of programming, Terry tried to analyze the program logs for WTTV for the sample week. Unfortunately, FCC logging rules do not require logs to show studios from which programs originate, but the WTTV logs did seem to indicate when audio, video or both came from Bloomington. The analysis showed that WTTV had been on the air 135 hours, 2 minutes, 37 seconds during the composite week, but had programmed from Bloomington for just 3 hours, 11 minutes and 50 seconds -- about 2% of the total. Tarzian clearly, then, fell short of the 50% of all non-network programming standard urged by Terry and, probably, fell short of even the 50% of all non-entertainment programming standard urged by Tarzian itself.[15] Taking studio size, distribution of executives, distribution of employees and distribution of programming all together, Terry argued that the Commission could not possible find the Bloomington studios to be the "main" studios.

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15. Terry did not note it in the Reply, but the Tarzian application indicated that 15.6% of WTTV's programming was "news, public affairs and other non-commercial, non-entertainment" programming. 2% is clearly less than half of 15.6%.

To further argue against the main studio move claim, Tarzian introduced as appendices to his Opposition 168 pages of information about Bloomington or Bloomington-oriented programming. Tarzian's objective seems to have been to argue that regardless of the outcome of the main studio issue, Bloomington had been well served. Terry, after caveats about First Amendment concerns, offered some comments discounting the value of this programming showing by pointing out that almost all of the news stories and even the special programs dealt with Indiana University sports -- events of substantial statewide interest -- and that Tarzian's proud conclusion that "there is, on the average, one Bloomington news story covered in each WTTV newscast" (Tarzian Opposition, p. 19) was hardly what the FCC expected in terms of local news service to the community of license.

Teleco and Sarkes Tarzian both argued that Terry had no grounds to ask for reconsideration of the dual ID granted WTTV in 1959. They disagreed among themselves, however, as to whether or not this involved a waiver of the ID rules. Teleco argued that since the rule contained the conditions for a dual ID grant, there was technically no waiver to review. Tarzian admitted there was a waiver. Terry's Reply conceded that the FCC itself seemed confused over this, but had always treated these cases like rule waivers. Tarzian graciously noted that some confusion originated because Terry had been incorrectly told by an FCC staff member that the 1959 grant was based on WTTV throwing a city-grade contour over all of Bloomington and all of Indianapolis.[16] Teleco claimed that Terry wanted the dual ID deleted; Terry countered that he had only asked

16. Both Martin Gaynes, for Sarkes Tarzian, and Terry tried unsuccessfully this proceeding to retrive the 1959 WTTV file from the Commission's archives. Cohn and Marks had not represented WTTV when the ID waiver was granted and neither the law firm nor the station had any precise records of the conditions of the FCC's grant.

Teleco to rejustify it under 1977 circumstances. Teleco and Tarzian both argued that the waiver, or dual ID grant, should be based only on consideration of economic and competitive considerations among stations in the market, and that WTTV would now meet those requirements. Tarzian, therefore, discounted what Terry claimed to be important differences between 1959 and 1977, and between Sarkes Tarzian, Inc. and Teleco Indiana, Inc. by arguing that they were not pertinent. Terry maintained that the Commission considered all relevant considerations in deciding an ID waiver request, that the temporal and structural differences between 1959 and 1977 and between the two companies were pertinent, and that they should be followed through to an overall public interest judgment about the effects of continuing the ID waiver upon Bloomington's service from WTTV. Tarzian said Terry had failed to offer economic evidence that would be needed to even attempt to show that the dual ID harmed the development of Indianapolis UHF independent TV stations. Terry's Reply was that it was impossible for him to make that showing as the FCC kept the evidence for it confidential.

With those parting shots, the record was closed -- and complete, ready for an FCC decision. It was a modestly extensive record considering that there had been no hearings and there were, accordingly, no hearing transcripts. As of November 17, 1977 the record included...

Teleco Application	376 pages
Tarzian Application (including logs)	598 pages
Terry Petition to Deny	116 pages
Teleco and Tarzian requests for additional time	3 pages
Tarzian Opposition plus appendices	199 pages
Teleco Opposition plus amendments	103 pages
Terry Reply	62 pages
TOTAL	1,457 pages

Even in the face of nearly 1,500 pages, Terry's Reply concluded by describing this as a "sort of motherhood and apple pie Petition to Deny. It does not call on the Commission to create much new law of (sic.) policy. Rather it just calls on the Commission to stand firmly -- affirmatively -- for some very old notions." (Terry Reply, pp. 59-60). Teleco, who obviously wanted the case to come out differently than Terry, still felt about the same, for its Opposition had said that "(t)he submission of a fifty-six page petition does not make this a complicated nor a difficult case." (Teleco Opposition, p. 2) Despite these statements, however, the author did not expect a very prompt FCC decision even though the record was complete. He thought the Reply had gone well, that most of his legal issues were still modestly intact, and that it would take the Commission some time to decide what to do. He anticipated Commission action in February or perhaps March, 1978. How fast Teleco or Sarkes Tarzian thought the Commission might act is unknown. In any event, both parties sat back to wait for FCC action. That waiting continued until January 16, 1978 when, in the absence of movement by the FCC, Teleco and Sarkes Tarzian initiated a serious effort to settle the dispute and began a period of negotiation with the Petitioner to Deny.

§1.4...Negotiation and Settlement, January 16, 1978 to April 14, 1978

On January 16, 1978, the U.S. Supreme Court held oral arguments in FCC v. NCCB, the "newspaper-broadcast crossownership" case. Terry had wangled a seat in the courtroom, and couldn't resist going to the case given its importance for telecommunications policy, the fact that it involved old friends at NCCB, and would -- in part -- be argued by another friend, Charles Firestone formerly of Citizens Communications Center. When Teleco Indiana's attorney discovered that Terry would be

in Washington on January 16th, he suggested a meeting to discuss what, if anything, might be done about the stalled WTTV transfer. The meeting was set for the afternoon following the oral argument.

Terry didn't ask exactly who would attend the meeting, but he assumed it would include the attorneys -- Reyner and Gaynes -- and perhaps Grace. When he arrived at the Hogan and Hartson offices, however, he discovered that two Teleco, Inc. principals -- not including Grace -- were to attend: Harold Berry, Chairman of the Board and W.B. Doner, Executive Vice President. Berry and Doner seemed to be included to allow Terry to meet more of the leaders of Teleco, Inc. and to be impressed with their interest in the station, sincerity and business acumen. If that was Teleco's objective, it was successful in the sense that Terry enjoyed meeting those individuals. To Terry, however, that kind of personal faith was very much a side issue to ending the WTTV controversy. What mattered at that point was what, if anything, could be put on paper to protect Bloomington's interests.

The parties to the meeting determined that what was said would be off the record so that there could be free and easy discussion of differences and as much agreement or understanding as possible reached. Terry still feels an obligation to respect most of those confidences, but since the WTTV controversy is now settled, feels he can reveal some very general information about what went on that day. Some confidential information about Teleco's plans if the sale were not to go through must still remain secret.

To anyone, of course, the primary motivation for the meeting should be obvious. The FCC had not acted quickly, it had a complete record for about two months but all requests for a "status check" with the staff --

about all the parties could ask for given the Commission's ex parte rules, indicated that there was little prospect of an immediate decision. One reason for that was the small size of the staff of the Broadcast Bureau's transfer division. The WTTV transfer had been assigned to a staff attorney, Jerry Fritz, but Fritz had been assigned several somewhat complex cases to work on and had simply not been able to move quickly on WTTV. The transfer of Washington DC's WJLA-TV was becoming very controversial, and it was one of Fritz' cases. The WJLA-TV transfer, however, had most of its effect upon the WTTV proceeding after the January 16th meeting, so further discussion of it will be reserved for later in this paper.

It was important to the parties that the FCC move quickly. Aside from the fact that a transfer is a somewhat delicate business deal -- there were investors to keep satisfied and optimistic -- Teleco had two sources of pressure for a solution. One came from the financial structure it had erected to finance the purchase. Teleco, Inc. raised $5,800,000 in new capital through stock subscriptions from its investors, but was borrowing $22,400,000. Evidently the company figured the sale would go through in three to four months -- certainly by January, 1978 -- for, according to an outside informant, Teleco was committed to contingent fees to the lenders of approximately $30,000 per month starting in January, 1978. Such an arrangement would not be uncommon given Teleco's financial package and, by the time of the Washington meeting, those payments had either begun or would begin shortly -- delay was getting costly.

The other pressure to solve the dispute came from the terms of the sale contract between Teleco, Inc. and Sarkes Tarzian, Inc. The asset purchase agreement provided that "If the FCC Order [approving the transfer] does not become a Final Order by May 31, 1978, this Agreement shall terminate

unless such date is extended by the written Agreement of the parties." An FCC order is reviewable for 40 days meaning, at an absolute minimum, Teleco needed initial staff approval by April 21, 1978. Quite properly, Teleco may have anticipated that Terry might seek FCC reconsideration or court review, either one of which could have added substantially to the time needed to get a final FCC order and, most likely, pushed the sale past its May 31st self-destruct deadline. Combined with the pressure of the lenders fees, it's obvious that the buyers had good reason for exploring the possibility of somehow settling the dispute.

Terry's position, too, was critical. He had always maintained that his primary interest was in seeing that Bloomington got improved TV service and he could admit that that objective might be served by a negotiated agreement with Teleco. Simply waiting out for an FCC decision might have the effect of leaving the station in Sarkes Tarzian's hands and Terry clearly believed that Tarzian's recent stewardship of the station had not served Bloomington well. He could imagine something quite positive for Bloomington coming from agreements short of legal resolution of the dispute by the FCC.

On the other hand, he had -- by this time -- a certain intellectual curiosity in seeing how the FCC would react to his handiwork. He had expended substantial time and a not insubstantial amount of money in the Petition to Deny and his Reply and he, naturally, would like to know how the FCC would vote on them if called upon to do so. When Terry and Teleco then met on January 16th, the meeting was mostly devoted to discovering if a way could be found to get Teleco the non-reviewable FCC Order it needed for closing with Sarkes Tarzian and Terry an FCC decision on the merits of his case. Some effort was made to discuss what the terms of a settlement agreement might be -- Terry suggested that it would have to cover time,

personnel and money for Bloomington service -- but mostly the meeting went around in circles trying to see if there was any way to get what both parties wanted. The problem was that the desires of the parties were not reconcilable. Terry wanted a decision on the merits. He could see restricting his rights to petition for reconsideration or to appeal, perhaps, in return for improvements in Bloomington service but he was, at that time, unwilling to completely give up those rights or to withdraw the Petition to Deny. Either action would mean, perhaps, that there would be no clear decision on important aspects of the case thus far prepared. Teleco's lenders, on the other hand, clearly needed something they could regard as a non-reviewable FCC decision granting Teleco the license, and that was impossible so long as Terry retained any of the rights for reconsideration or appeal. The meeting ended with no agreement other than that Terry would seek advice from people in Washington DC on whether some restriction of his appeal rights could be worked out, and that he would get in touch with Teleco's attorneys about that promptly.

Further conversations on this idea were held, by phone, in February and March. They were mostly inconclusive. Terry never closed off the possibility of some restriction of his rights of appeal, but neither he nor Teleco nor Sarkes Tarzian could work out appropriate language satisfactory to Terry and to the lenders. Waiting for some FCC action just continued.

Unfortunately, it looked even less likely than before that the Commission would act on the WTTV transfer soon. The reason was the continuing controversy over WJLA. The problem with the WJLA case was that it just would not go away. Just as the FCC approved the trade of WJLA for KOCO-TV in Oklahoma City, WJLA's owner, Joe Albritton, sold the Washington Star. Although the FCC order approving the WJLA-KOCO trade

did not, by its own terms, hinge on Allbritton's retaining the Star, it was generally understood in Washington that the Commission had overlooked some of the odd aspects of the deal because of Albritton's repeated claims that he needed some of the TV revenues to support the financially ailing Star. Allbritton's sale of the Star to Time, Inc. caused the FCC to reconsider the earlier WJLA trade approval on its own. Between January 12th and March 9th, the WJLA case reached an open meeting four times. It was a case that just wouldn't go away and, unfortunately for WTTV, it was a case assigned to Jerry Fritz. As one FCC staff member lat[illegible] put it, WJLA -- because it was a hot Washington DC case -- had "political priority" over WTTV, and the case unquestionably contributed to delay in processing the WTTV transfer. Further delay increased the pressures on both Teleco and Terry, for the May 31st deadline was getting awfully close.

One thing that had come out of the January 16th meeting was Terry's recognition that, if the FCC got really delayed, he would someday have to make a choice between his interest in seeing what the Commission might do and whatever were the best settlement terms he could get from Teleco, Inc. It had always been his position that he was more interested in Bloomington's TV service than in the legal issues per se, so, even at the January meeting, he had to admit -- to himself and to Teleco -- that if a really good settlement was possible, it might be accepted rather that wait for an FCC decision that might come too late.

By mid-March, 1978, Teleco was approaching Terry for another meeting. This one was planned, from the beginning, to talk about the exact contents of a settlement agreement. It was obvious, by that time, that Terry would have to withdraw his Petition to Deny in order to meet the May 31 deadline. Tarzian seemed unwilling to extend the contract,

Teleco knew that it would take a really meaningful proposal to improve Bloomington service to get Terry to withdraw. A meeting was set for the Indiana Memorial Union, on the Bloomington campus, for March 30, 1978. The participants this time were to be Reyner, Grace, Terry and Marcus Cohn himself in lieu of Martin Gaynes who had left Cohn and Marks to become a senior partner in another firm. The prospect of having Cohn himself involved in the proceedings was something Terry approached with excitement and concern. Cohn is almost a legend in communications law circles and his involvement showed that the case was being taken quite seriously. On the other hand, Terry wondered if he knew broadcasting law well enough to protect Bloomington's interests in such a meeting. As it turned out, however, Cohn had little to do except observe things -- and protect his clients general interests -- as Teleco and Terry found that, at last, they could rather easily reach agreement.

In hindsight, Terry believes he must have often frustrated Teleco by being very imprecise about what he meant by improved service to Bloomington. It was clear that was what he wanted, but he never quite spelled out for Teleco what that would include. His failure to do that was deliberate. The reason was that Teleco knew its abilities, and the abilities of WTTV, far better than Terry did. He wanted Teleco to propose something reasonable with which it could live, figuring that it would be more likely to perform well in the long-run with those kinds of agreements than with promises tailored precisely to some Terry demands. On the 30th, Teleco at last came up with a package of promises for improved Bloomington service that Terry found highly promising. It did not include the kind of profit reinvestment formula that Terry had in mind when he said a settlement would have to include money for Bloomington service, but from the moment Reyner outlined what Teleco was at last prepared to offer, Terry sensed that the case would

end in a private settlement agreement between Teleco and Terry unless, of course, Terry had been so successful in the Petition to Deny that the FCC would not, in the end, ignore it even if withdrawn.

Terry had come to the March 30th meeting with a list of possible lines for settlement. As Reyner went through the Teleco proposals, Terry realized that most of what he expected was there. He made one suggestion to Teleco for a change in one of its proposals. Teleco was not prepared to make that change at that meeting, saying that it would have to check the costs of the change out but could decide in a few days. Terry said he wanted to talk the Teleco proposals over with advisers in Washington and Bloomington and that he would get back to Teleco's attorney in promptly. His advisers considered the Teleco proposal to be a good one, although they offered a few additional and relatively minor amendments. Teleco indicated that it could accept the major proposed change to its package and, by April 3rd, both Teleco and Terry were moving toward final agreement to be worked out at the annual National Association of Broadcasters annual convention in Las Vegas. A meeting at the Sands hotel April 12th worked out the final details. Terry agreed to prepare a letter withdrawing the Petition to Deny; Reyner prepared the final draft of a package of Teleco amendments. Both would be filed simultaneously with the Commission in Washington; Terry's letter indicated that he was withdrawing the Petition to Deny "in light of" the simultaneous Teleco amendments. The package was filed with the FCC on April 14, 1978. Assuming the FCC now approved, the legal controversy was over. Hundreds of pages of Petition to Deny, Oppositions and a Reply were made moot by a 16 page set of Teleco amendments, a cover letter, and Terry's one page letter withdrawing the Petition to Deny.

Teleco's amendments did not, and could not, settle every point raised by the Petition to Deny. They did not address, for example, the complaints about alien ownership, unauthorized transfer of control, or the dual Bloomington-Indianapolis ID. They did address, however, in direct and indirect ways the question of whether Teleco would place Bloomington in a true "primary" position in designing its program service, how Teleco would determine Bloomington's problems and needs, and what kind of news and public affairs programming Bloomington would get from the WTTV studio in town. Teleco's amendment package included the following.[17]

1) Teleco dropped the "Greater Bloomington-Indianapolis Area" concept. The amendments replaced language referring to that concept with a new statement that "(t)he Applicant's principal commitment shall be to serve the unique problems, needs and interests of the city of license, Bloomington, Indiana. The Applicant also shall endeavor to provide programming of interest to the residents of the Indianapolis, Indiana Metropolitan area."

2) Teleco agreed to hold an open, annual, Bloomington meeting to which it would invite Bloomington community leaders. While the meeting could be used, in part, to meet Teleco's ongoing ascertainment of community needs requirements, it was also specifically stated that the meeting would provide members of the Bloomington community with a chance to offer "any other comments on WTTV's service."

3) Teleco agreed that in would include in its public file "separate lists of the problems, needs and interests which pertain to Bloomington on the one hand and the Indianapolis, Indiana Metropolitan area on the other hand. Although a number of the problems, needs and interests of these communities are likely to be common to both communities, the Assignee shall endeavor to identify separately that programming which is responsibe to the unique problems, needs and interests of the Bloomington area." This promise meant, in effect, that Teleco would maintain a problems-programs list for Bloomington and avoid mixing up the ascertainment of Bloomington problems and Indianapolis problems.

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17. See again p. 27 supra. for the relationship between these amendments and the Petition to Deny, Oppositions and the Reply.

4) Teleco agreed to move a half-hour public affairs program previously planned for the Indianapolis studios to the Bloomington studios.

5) Teleco agreed to several substantial amendments to its news proposals for Bloomington. The original application had proposed only a part-time news reporter/photographer for Bloomington. As modified, Teleco now proposed to...

   a) Purchase a "fully equipped news vehicle...for coverage of news events in the Bloomington area."

   b) Hire the following additional personnel: "a full-time Director of Bloomington News and Public Affairs, a full-time news reporter/photographer and three to five part-time news reporters/photographers. It is anticipated that the total time to be devoted by these part-time employees will average approximately 40 hours per week. The utilization of part-time personnel as proposed should aid the Station by providing greater flexibility to respond to fast-breaking news events."

   c) "(P)rovide equal emphasis to Bloomington and Indianapolis news" meaning that Teleco "expects, on the average, that one-half of its local news stories will be addressed to events occurring in or of particular concern to the Bloomington area.

   d) "(O)riginate more than fifty percent of its news, public affairs and other non-entertainment programming from the Bloomington studio. More specifically, at least fifty percent of the Station's local news programming and more than fifty percent of the Stations public affairs programming will originate from the Bloomington studio." Teleco promised further that "Appropriate records will be publicly available to demonstrate the place of origination of" this type of programming.

6) Teleco agreed to upgrade the position of Bloomington Studio Manager to a new position, "Manager of Bloomington Operations." The upgraded position would include expanded responsibilities and would report to the General Manager of WTTV, while the previous Bloomington Studio Manager reported to the Program Director.

7) Teleco agreed to establish Bloomington offices for the WTTV General Manager and for the President of Teleco Indiana, Inc.

8) Teleco agreed to "(c)oncurrently with the filing of its Annual Employment Report...place in its public file a list of Bloomington employees by name and job title" and "(c)oncurrently with the filing of its annual Programming Report...place in its public file a description of the programming...broadcast during the past year in response to the problems, needs and interests of the Bloomington community."

§1.5...The Legal Denouement, April 15, 1978 to July 7, 1978

It seemed likely that with the Petition to Deny withdrawn the FCC would shortly approve the WTTV transfer. Certainly Teleco had that expectation, and Terry shared it. Now that a bargain had been struck with Teleco, he certainly wanted it approved by the FCC. Yet, he had a fear that there was a chance that the Commission might still disapprove. After all, the Commission could not ignore anything that came to its attention that pertained to the judgment it had to make about whether the sale would further the "public interest, convenience or necessity," and could not simply forget the pleadings filed over the past seven months. An event at the NAB Annual Convention had heightened the author's concern that the FCC might, in fact, still disapprove.

On the very eve of his settlement with Teleco, a senior FCC staff official had volunteered a most interesting complement to Terry about the WTTV case. The person, clearly in a place to know how the Broadcast Bureau felt about the case, said "you won, you served the public interest." Not wanting to violate the ex parte rules, the author did not follow up on this remark, but it did enter into his decision as to whether or not he should indeed agree to the WTTV settlement with Teleco. He decided to settle, even with this knowledge, for several reasons. First, he had already really given his word to settle if the agreement presented to him by Teleco the next day accorded with the agreement worked out in Bloomington and by telephone between March 30th and the NAB meeting. Second, he genuinely liked the terms of the agreement and thought Bloomington would be better off under it than it would be if Sarkes Tarzian was forced to keep the station -- the most likely result of any FCC action designating the transfer for hearing, as such a designation order would clearly kill the Teleco-Tarzian deal. Third, he wanted the agreement "on the record"

in case the FCC did issue a designation order. The sale would die, but the agreement could constitute a starting point for discussion about improved Bloomington service with Tarzian. Finally, the most optimistic reading of the staff member's remark was that the Broadcast Bureau staff would recommend designation on some issue -- he knew not which one or ones -- and Terry was never sure that the Commission would vote to support such a Bureau recommendation.

It's always risky to try and predict the votes of FCC Commissioners but Terry, of course, had his opinions. He thought he would most likely get support from FCC Chairman Charles Ferris and Commissioners Fogarty and Brown. With a seven member Commission, one more vote would be needed. He wasn't sure he could get the fourth vote. Commissioner Quello seemed unlikely. A former Detroit area General Manager, Quello tended to support broadcasters rather than Petitioners to Deny, and would be quite angry, given some recent cases, if Terry was granted standing to file the Petition. Commissioner Lee also seemed far from a sure vote. Lee was known to be a personal friend of Sarkes Tarzian's -- in fact, at a party during the NAB the Petitioner was introduced to Lee as "Professor Terry from Indiana University, Bloomington" to which Lee responded with a comment that Terry must know Sarkes Tarzian whom Lee had recently seen in Washington in connection with the hearing over renewal of the University of Pennsylvania's license for WXPN-FM (Tarzian was a trustee of the University). Terry didn't really question Lee's integrity, he thought Lee could separate friendship from his legal duties as a Commissioner, but he viewed Lee as probably not that interested anyway in designating the WTTV transfer for hearing on the issues that had been raised. Terry had made an effort to appeal to Lee, long a UHF-TV advocate, by adding the issues about the effect of WTTV's dual ID upon an Indianapolis UHF-TV station, but

those issues had not gone that well in the Petition to Deny or the Reply and he didn't think he could count on Lee.

Commissioner Washburn was unpredictable. Terry thought he might be impressed with the main studio issues or the ascertainment issues, but Washburn was generally not one to find against a pioneer or established broadcaster, and Tarzian was clearly a broadcast pioneer. Washburn's vote, Terry thought, would probably not go his way. Finally there was Commissioner White. To Terry, White was the best bet for the fourth vote -- but no sure thing. Terry thought White was well advised by her staff and that, in normal times, she would probably vote to designate based on the issues in the Petition to Deny. These were not, however, normal times for Commissioner White. At the NAB Convention she had clearly taken public postures designed to increase broadcaster support for her renomination to the FCC. Her term had expired, President Carter had to appoint a Republican and, for political reasons, a woman. Most everyone thought White an adequate Commissioner and, in April, 1978, she still seemed to have a chance for reappointment as a "merit appointment" although she rarely gave Chairman Ferris a fourth on controversial issues. Terry concluded that the WTTV issues would be a close call for her and, considering her reappointment, she would probably not risk losing reappointment support by becoming the fourth vote to block the largest independent TV station sale ever. So, making reasonable estimates about a Commission vote, Terry concluded that he might get three votes in support of a staff recommendation to designate the transfer for hearing. All in all, there were just many good reasons to accept the offer of the Teleco settlement.

Yet, the FCC did not act immediately. One reason was a small problem thrown in the way of Teleco Indiana, Inc. and Sarkes Tarzian, Inc. On April 20, 1978 a graduate student in the IU Department of Telecommunications,

Thom Hogan, sent a letter to the FCC objecting to Terry's request to withdraw the Petition to Deny. Hogan decided to send the letter on his own initiative because he realized that the Terry-Teleco agreement had not resolved all of the issues in the Petition to Deny. He discussed his plans with Terry, who did not object to his participation; partly because he thought anybody from Bloomington had a right to comment on the agreement and partly because he simply thought Hogan's letter would be quickly dismissed by the FCC as an attempt to enter a ball game after it was really over. After noting that he understood that the agreement had not resolved all the Petition to Deny issues, Hogan specifically expressed his hope that "the questions of unauthorized transfer or principal studios and foreign ownership still need to be investigated by the Commission."

Copies of the letter were not served on the attorneys for Teleco or Sarkes Tarzian. They were surprised, a few days later, when an FCC staff attorney asked them for their response to the "Hogan Letter" -- something they knew nothing about. The attorneys responded to the staff member that the Commission should simply reject Hogan's letter as unauthorized and improper. Still, the Hogan letter may have slowed the staff down some -- and, as will be discussed shortly, the staff was still having some troubles of its own deciding whether or not to approve the transfer. On May 9, 1978, Richard J. Shiben, Chief, Renewal and Transfer Division sent a response to Hogan. On the same day, the Commission approved the transfer by telegram to the parties, requiring that they close the deal within 60 days.

Oddly, the letter to Hogan is the only written record of the Commission staff's response to the Petition to Deny. The staff told Hogan that his April 20th letter, standing by itself, could not be

accepted as a Petition to Deny and described his "efforts, in this respect, to incorporate by reference the pleadings and affidavits of a petition to deny which was subsequently withdrawn" as "impermissable." That much Terry had expected. Shiben added, however, a most interesting paragraph:

> We have, however, independently reviewed the application and related pleadings. Based upon a review of the application and subsequent amendments, we have concluded that the public interest would be served by a grant of the application.

The attorney for Teleco is probably very grateful for Hogan's intervention. Shiben's paragraph was not really necessary, for it simply reinterated something the Commission had said by implication that day with its telegram approving the sale: given the amended application, the Commission approved it in the name of the public interest. Should it prove necessary, however, to file a Petition to Deny at some future time against Teleco's operation of WTTV, their attorneys can be expected to use the language of the May 9, 1978 staff letter to defeat issues similar to those raised in the Terry Petition to Deny. In any future Petition to Deny, Terry will have to show that facts raised there are different from facts or legal arguments raised in the 1977 Petition to Deny.

Basically Terry believes that the transfer staff accepted the Terry-Teleco agreement for reasons very similar to his reasons for endorsing it. He has interviewed several FCC staff members, on a confidential basis, and believes that what follows accurately represents the staff's attitude toward the transfer immediately before the Petition to Deny was withdrawn and through the May 9th approval of the transfer. Low-level transfer division attorneys had mostly completed their analysis of the documents filed in the case. They were prepared to go either way on the request for designation for hearing -- they could prepare an argument to reject the Petition to Deny or they could prepare a designation order on several

issues. It was obvious that Terry was not going to win on the alien ownership issues, the unauthorized transfer of control issues or the dual ID issues -- the staff just didn't consider the case there very strong. The staff, however, did see substantial merit in the argument that there had been an unauthorized move of the main studios and, to a somewhat lesser extent, in the allegation that Teleco had not really prepared an application for Bloomington. Teleco's ascertainment still had some troublesome features.

Yet, like Terry, the staff was realistic and knew that any designation order would kill the sale, leaving the station in Sarkes Tarzian's hands. Like Terry, they considered the agreements with Teleco to be favorable to Bloomington -- if Teleco lived up to them and one simply had to assume that self-interest would lead them to do that. The staff seemed inclined to let the main studio issue pass, since the virtues of the improved service to Bloomington seemed more important than a kind of slap on the wrist -- a $20,000 fine at most -- to Sarkes Tarzian. The staff saw another reason for wanting the sale to go through that had occurred to, but was not considered important by, Terry.

Legally, Sarkes Tarzian had a "grandfathered" AM-FM-TV combination: WTTS(AM), WGTC(FM) and WTTV(TV), all licensed to Bloomington, Indiana. The Commission had prohibited creation of new AM-FM-TV combinations in 1970, and prohibited their intact sale, but it grandfathered existing combinations like Bloomington. To the staff, a great virtue of the Teleco purchase is that it would break-up one of the grandfathered units. To Terry this was unimportant, because in his eyes WTTV had been operated so much like an Indianapolis TV station that the combination did not constitute undue control of Bloomington electronic media. To the staff, the breaking up of the combination plus the virtues of the Teleco amendments seem to

have pushed the decision over in favor of Teleco.

It was, however, close. As already noted, the staff was ready to go "either way" and simply thought there would be one more high-level Broadcast Bureau meeting, just after the NAB Convention most likely, to direct the staff as to which direction to go. The FCC staff member's remark at the Convention -- "you won, you served the public interest" -- suggests to Terry that the high level meeting had either taken place at Las Vegas or was a mere formality. His belief would be that the leaders of the Broadcast Bureau had decided to direct the staff to prepare some kind of designation order, most likely over the main studio move issue, but then changed their minds when Teleco submitted its April 14th package of amendments and when Terry withdrew the Petition to Deny.

In any event, the staff gave approval to the transfer on May 9th. For various tax reasons, Sarkes Tarzian wanted to delay the sale as long as possible, but did want it to go through. He and Teleco agreed to extend the May 31 "self-destruct" deadline and eventually decided on date for closing of July 6, 1978. The parties did close the deal on that date, and Teleco notified the FCC that it would assume control of WTTV at 3:01 a.m., Friday, July 7, 1978. By an odd coincidence, that date was one year -- to the day -- after the signing of the asset purchase agreement.

Somehow everyone seemed to come out well. Sarkes Tarzian sold his station for a very good price. Teleco had weathered difficult times and now had a property that it obviously wanted; perhaps under terms that it did not really like but with which it appeared to be satisfied for it could have gotten out of the deal by not offering a realistic settlement. Bloomington had whatever came of the promises made in the April 14th set of Teleco amendments -- what that was would be seen only in future

months and years. Terry, it seemed, had survived with his professional reputation mostly intact -- at least he had not been defeated at the FCC. The whole episode, however, left him with a number of unanswered questions about his behavior, the role played by the FCC in evaluating transfer applications, the wisdom of public participation in that process, and the issue of whether scholars could, or should, be doing this kind of thing. Many of those questions or doubts are still open -- but may make good topics for discussion among scholarly peers.

SECTION 2: REFLECTIONS ON THE CONTROVERSY

The author hopes a brief oral presentation of Section 1 of this paper will suggest numerous topics for discussion by attendees of the session. As a starting point, the following questions or issues might be addressed.

1) Would you do this to your local newspaper? Should broadcasting be different?

This is, obviously, a broadcasting law controversy and possible only because this country has created different legal systems for the print and broadcast media. The author's experience is that most AEJ Law Division members are comfortable with constitutional aspects of communications law, and with journalism law topics such as libel or privacy, but that they are generally less familiar with broadcasting and its emphasis on administrative law. To the author, although trained in a traditional journalism law Ph.D. program, broadcasting is a fascinating field of study worthy of more critical attention by AEJ members.

He fears that a few AEJ Law Division members may support his actions because of their outcome; after all, how could more TV news coverage for Bloomington be "bad?" "After all, it was only broadcasting." To endorse his actions for those reasons, however, is to shortchange the importance of broadcasting and the complexity of its regulation. The author is personally content with the constitutional status we have accorded broadcasting, a set of protections much different than print, and that his actions did not violate the First Amendment. Any AEJ member considering entry into a local communications law controversy should do so, however, only with the support of a soundly-reasoned constitutional theory to limit his or her intervention. In broadcasting, that means that many AEJ members will have to become more familiar with its often unique legal framework, and

work out their own position on its constitutional status, before getting more deeply involved.

2) Should one do this sort of thing if one believes in the concept of professionalism?

Most of us are not trained as lawyers, and we probably warn our students of that early in our classes. Some of us sometimes view attorneys as pernicious. Certainly that was true at points in this controversy when the author feared that his only effect was to inflate the billings of two successful Washington, DC law firms. Still,we probably caution our students that law is a profession and that for non-routine legal problems -- beyond those encountered in day-to-day journalism -- it is essential to consult professional counsel. In addition, journalism education has a long tradition of encouraging professionalism among journalists. Should we, then, as alleged academic professionals ever assume even a quasi-lawyer-like role, as the author did in this case? Doesn't that undercut our argument that professionalism is an important value to instill in our field?

Fortunately, in a broadcasting licensing case like this one, there is a shortcut answer for the author to this problem. For years, lawyers and lobbyists for the broadcasting industry have defeated or limited Congressional efforts to create an Agency for Consumer Protection on the theory that broadcasting's licensing process is "open to all" without the need of government advocates. If nothing else, this controversy convinced the author that that statement is false, for getting involved requires abnormal knowledge and abnormal motivations; it is just not something in which everyone without counsel could be effectively heard. Having made the argument that it is open to all, however, broadcast attorneys can hardly object when an outsider does try to get involved.

In this case, the lawyers never raised any objection to the author's involvement on the theory that he was not a lawyer. In fact, the author's opinion on that issue is that before long, the lawyers involved here would have conceded that he was knowledgable in the substance, although perhaps not procedure, of their area. He, in turn, regarded them as professional in their advocacy of the interests of their clients.

Non-broadcast law cases could be more difficult to resolve on this professionalism score. So, as well, could cases where the scholar did not represent himself, as in essence happened here, but where advice was offered by the scholar to third parties. It seems that, prior to any personal involvement in a communications law controversy, AEJ members must ask themselves whether their activities could be reconciled with the professional status of the law, a status, the author strongly suspects, that most AEJ members would not want to disturb.

3) Is this proper behavior for a professional scholar and academic anyway? What are its costs and consequences? If it is proper behavior, should it earn professional rewards?

Before getting involved in this controversy, the author conducted a sort of impact assessment. That is a course of action highly recommended to any contemplating such involvement in a local controversy. His assessment included: impact on Indiana University, impact on his department, impact on its students, and impact on himself. He concluded, obviously, that the potential adverse effects were outweighed by the potential benefits to Bloomington. For the most part, those predictions as to impact were supported.

He found it hard to predict the consequences for Indiana University. He knew that the university hoped for a bequest from the eventual estate of Sarkes Tarzian, and assumed his actions might reduce the probability of such a gift. He concluded, however, that both the impact and the possibility

of any gift to the university were speculative. Tarzian's major philanthropic contributions had always been to his alma mater, the University of Pennsylvania. He was a member of its Board of Regents. To the extent that the author, and those with whom he discussed it, could speculate, Sarkes Tarzian's probability of a bequest to the university was low. Discussion prior to filing the Petition to Deny with leaders of the Bloomington business community convinced the author that Tarzian had long-ago lost prominence in that community, mostly by moving his major manufacturing divisions overseas, and that Teleco was an unknown but to some extent suspect entity. As a result, he decided that the impact on the university seemed minimal. After all, universities in the past had survived rather well despite some controversial actions by some of their faculty. He could see no reason why this instance should be much different.

A greater worry was for the impact of his actions on the department and its students. The department had acquired a new chairman three years previously and he had, with some success, made improvement in the department's industry relations a major objective. The author feared those efforts, which he valued, might be undercut. He resolved this dilemma mainly through an early discussion with the chairman who, as previously noted, had been involved in a similar controversy in Madison, Wisconsin. The chairman's experience had been that a well-founded complaint, even if it led to a Petition to Deny, created some industry hostility but did no serious harm to a department's standing. Among some in the broadcasting industry, in fact, such actions by the Madison academics had been quietly supported.

That is what happened, as well, in the WTTV controversy. The chairman's neutral stance certainly helped mute interpretations of it as some kind of departmental action. Early in the controversy, leaders of Teleco

tried, at the Indiana Broadcasters Association annual meeting, to characterize this as some kind of Department of Telecommunications activity. The author discussed this problem with Teleco's attorneys and some of the principals, and tried to impress on all the fact that this was an individual and not a departmental action. By the end of the controversy, it seemed clear that Teleco at last understood that this was a solo action, and appears to have so described it to broadcast industry colleagues. From time to time, Terry got quiet support from a few broadcasters. Mostly these were people who at first attacked him, but were then willing to hear out his side of the case . While those broadcasters usually stopped short of supporting his tactics, they -- in every case -- agreed that he had a point worthy of pursuit in some fashion.

The author's greatest concern was for potential adverse effects on his students. The author predicted this impact would be minimal as he was not, at the start of the controversy, well known among Indiana broadcasters and few students were closely identified with him. So long as the general image of the department did not decline, he guessed few students would be directly harmed.

From all he can gather, the controversy actually helped some students more than it hurt. He has been surprised at the number of seniors, mostly students or former students in his regulations courses, who have volunteered stories of how he became a part of job interviews. Quite a few potential employers seemed interested in "that" Indiana University professor, and asked students about the author. Once students explained that they had taken a course from him, or were taking it now, they found the topic to be a good opener to the interview; a chance to show they knew something about broadcasting law and, perhaps more important, were up with current controversies. All of these student reports, although anecdotal, stress that the

students found the controversy more helpful than harmful.

There was another side benefit, but it clearly should not motivate involvement in controversies of this type. Although the author generally refused to discuss WTTV-related events in his classes, students were well aware of it through local news coverage and from the broadcasting industry trade press. The controversy seemed to heighten student interest in the author's law course. Since he seemed, in the end, to hold his own against the broadcast interests, the author suspects -- and conversations with students support it -- that his involvement increased his credibility as one able to handle that often-too-important to students "real world." What, then, about costs and consequences for the author himself?

Those costs and consequences can be measured two ways: out of pocket costs and professional costs. The out of pocket costs, as shown in Table 1, are clearly of a magnitude that even underpaid scholars can, if they choose to, afford. They were almost impossible to estimate at the beginning of the controversy because the author had done nothing similar and knew of on one else who had kept records as to the costs of such activities. The author's best prediction at the start was that this might cost up to $1,000 to go through an FCC decision. The author was prepared for that. He knew, however, that court action would cost more, and for that knew he would have to rely on outside assistance. The eventual costs of about $350 are, obviously, much less that estimated. They are much less than costs to Teleco and Sarkes Tarzian, although the author finds their expenses hard to estimate. A good guess is that the two companies together might have incurred extra financing costs and lawyers fees of around $250,000. Such costs should be considered by anyone considering involvement in a communications law controversy, for they may affect the ability of the company involved to perform beneficially. In extreme cases, such costs could drive a company

TABLE 1: Petitioner to Deny's Out of Pocket Expenses

Purchase of copy of the transfer application from Sarkes Tarzian, Inc.	$28.46
Photocopy charges for appendices to Petition to Deny and for Reply to Oppositions (16 copies of 118 pages at $0.03 per copy)*	$56.64
Phone expenses**	$93.78
Air-line Fares (one round-trip, Indianapolis to Washington, DC and return)***	$134.00
Air-freight (to get Reply to Oppositions to FCC by deadline)	$30.00
Miscellanous postage	$1.43
Supplies (approximate)	$5.00
TOTAL EXPENSES	$349.31

* The writing of the Petition to Deny was completed in Washington, D.C. Citizens Communications Center graciously provided the required copies of the Petition. Accordingly, this total excludes 16 copies of a 60 page document, or 960 copies which, if estimated at $0.03 per copy would add an additional $28.80 to total expenses.

** Phone expenses are higher than they might be, as all phone calls made from Indiana University phones were charged -- at operator assisted rates -- to Petitioner's home phone number.

*** Two related air trips are excluded: (1) a trip to Washington, DC to see the U.S. Supreme Court's oral argument in NCCB v. FCC, the "newspaper-broadcast crossownership" case in January, 1978 and (2) a trip from Indianapolis to Las Vegas to attend the National Association of Broadcasters Annual Convention in April, 1978. Both trips included meetings with parties to the then proposed transfer, but since the trips would have been made anyway, no portion of their cost has been charged as expense for this Petition to Deny.

from business. It would be irresponsible not to consider the financial state of a business, and impact of intervention upon that financial state, in deciding whether or not to get involved in a controversy. In this case, Sarkes Tarzian was clearly sound, and Teleco was proposing to acquire a $26+ property, although their financial structure was not that of an established corporation and accordingly, perhaps, somewhat weaker than that high figure suggests.

Professional costs were the hardest thing for the author to estimate in advance, and remain the hardest thing to compute after the fact. One professional cost, of course, is just time spent pursuing this controversy. To some extent, this was time taken from more unarguably rewarding professional activities, such as traditional scholarly research. A large proportion of the time spent on the WTTV controversy came from the author's leisure time, but is undeniable that much of it also came from normal research time. As shown in Table 2, the author's best estimate is that the controversy, from beginning through withdrawal of the Petition to Deny, took up 273 person hours. It is still an unanswered question whether this was time professionally well spent. The author counts both pluses and minuses.

A threshold question is whether universities can or should dole out any professional rewards for this kind of activity. The author believes that they should. Rewarding such activities would not put the university on one side or another of an advocacy position -- something the author sought to avoid. Universities never endorse or support the truth of the findings of their researchers anyway, they simply stand behind the freedom to inquire and create and offer up research findings for the judgment of peers and for the presumed ultimate benefit of the society which supports the university. If the peers find the contributions of merit, then the

university protects and rewards the scholars under the umbrella of academic freedom without necessarily endorsing their findings.

The author believes some such professional credit can, and should, come the way of scholars who engage in these kinds of controversies on a pro bono basis. Universities reward contributions of their faculties to their "field." The question of whether professional credit is appropriate here turns, largely, on the definition of those two terms: "contribution" and "field." To the author, telecommunications and journalism are inter-disciplinary applied fields of inquiry. Many of the legitimate practitioners of such a "field" have no academic, teaching or research connections, but are people that the author would regard as peers. In a broadcasting law controversy, such peers could be found at the FCC and within the broadcasting industry and the communications bar. Impact upon them should be counted. The issue, then, is whether activity within such an interdisciplinary field, and with such peers, is a "contribution" and, if so, whether that contribution should be treated as research or service.

The author has little difficulty classifying this activity as a contribution to his field of telecommunications law and public policy. It became familiar to both his academic and non-academic peers and appears to have influenced their thinking about localism in broadcasting and, had it been pursued to its end, seemed to have the potential for being the first TV case ever designated for hearing on a citizen filed Petition to Deny over the issue of local service. It was clearly a contribution subject to review, for all filings in the case became matters of public record subject to examination by anyone. This is not a case where a scholar claims credit for classified research hidden from public, and peer, review.

The real question is whether, in university terms, this is "research" or "service "-- the author doesn't seriously doubt that it is one or the

TABLE 2: Petitioner to Deny's Estimated Personhour Expenditures*

Pre-Petition to Deny: Initial contacts with Teleco officials, exchange of letters, contact with Bloomington leaders interested in the transfer	78 hours
Preparing the Petition to Deny: Reading the transfer application, research, outline of Petition, final typing, trip to Washington, DC to deliver**	80 hours
Preparing the Response to Oppositions to Petition to Deny: Reading oppositions, research, outlining, final typing, trip to Indianapolis to put on plane for delivery to Washington	45 hours
Meetings in Washington, DC (including preparation)	10 hours
Meetings in Bloomington, IN with community leaders and with parties to the transfer -- includes preparation)	20 hours
Meetings in Las Vegas, NV (including preparation)	10 hours
Miscellaneous (phone consultations, press contacts)	30 hours
TOTAL PERSONHOUR EXPENDITURES	273 hours

* Petitioner did not keep an exact count of this time. If anything, however, these estimates are conservative. As is true of any project in which one has deep involvement, there is a great deal of time not counted here simply spent thinking about a problem or issue. The time period covered is July, 1977 through July, 1978.

** This figure is smaller than one might expect because a detailed outline of the possible Petition to Deny was included in one of the letters exchanged earlier between Petitioner and Teleco officials. The time spend preparing that outline is included in the preceeding entry, and the outline substantially simplified preparation of the eventual Petition to Deny.

The distinction is not trivial. However much universities may try to claim that promotion, tenure, etc. is based on the famous troika of teaching, research and service, and say that the three are of equal value, anyone with modest university experience knows that in practice, research is clearly the highest priority, teaching a second of varying importance among different universities, and service nearly always a poor third. Since there are no direct financial rewards from this kind of activity, and very few altruists, universities will discourage this kind of faculty activity if they treat it as service, or give no credit for it at all. The author believes he is making this argument out of motives other than self interest. Traditional support systems for public interest positions, at least in broadcasting but probably in other media as well, seem to be drying up. It may well be that only universities can support the advancement of disinterested positions in the telecommunications, or just communications, policy area. In the author's view, advancement of such positions by those, like university faculty, with the expertise to do it is crucial to the selection of well-formed communications policies. It would be contrary to the objectives of the university, to advance knowledge and society, were the university to act to chill such activities by willing faculty members.

After all that, however, the author has a hard time classifying this particular series of events as research rather than service, for two reasons. First, research should to some extent be measured on the basis of its national impact. In most research, we do this by assuming such national impact from publication in a scholarly journal of national stature. Here national impact would be difficult to demonstrate because the settlement eventually struck avoided the action with that impact, FCC designation of the transfer application for hearing. Indeed, at the last moment, the

author compromised away his chance for national impact in favor of a more positive local impact, the possibility of improved TV service for Bloomington. Local rather than national impact, however, had been the prime concern from the beginning and is probably the reason this activity is best classified as service rather than research. National impact, as a consequence, would have pleased the author, but from the beginning it was Bloomington that mattered most.

However, the author would argue that other kinds of involvement in communications law and policy development should be counted, appropriately, as research. For example, the author has in many instances filed Petitions for Rulemaking, Comments and Reply Comments in FCC proceedings and the like. Those filings, the author believes, should be counted as research. They are the fruits of objective research techniques well known within this field. They are submitted pro bono, and without an economic interest in the policy outcome. They are intended to have national impact. They are public documents, subject to peer review. They seem to the author to be as influencial a way as possible for a scholar of telecommunications law and public policy to have an impact on his field, given that there are no major journals devoted to that field and those journalism and telecommunications scholar journals that occasionally publish articles in the area do so with terribly long lead times for articles -- a real problem in this fast moving area -- and are not much read by the non-academic peers. There is just no traditional publication forum for a consistent exchange of articles on this field.

There is a final question to be addressed in this section; was the research or service, here, "advocacy research." The author believes it was not, but will admit to some doubts as to his actitivies near the end of the proceeding. These issues will be addressed at more length shortly.

In the meantime, there's a bit more to be said about the professional impact of this controversy on the author.

Just as his department had been strengthening ties to the broadcasting industry, the author had been working to establish good contacts, at least respectful ones, with influencial legal figures in the industry. The author feared greatly that his Petition to Deny might cause those developing ties to crumble. That did not happen at all. Many of the lawyers he knew prior to the Petition to Deny became interested in the controversy and followed it from the sidelines. If anything, as with his students, these events increased his credibility among industry legal leaders. It broadened his contacts in the communications bar. Overall, no significant tie was weakened, several new contacts were made.

4) Was this "advocacy research?"

"Advocacy research" has a bad name among scholars. The author believes there are two kinds of advocacy research, one legitimate and one reprehensible. The author thinks his activities fall predominantly on the legitimate side of the dividing line, although it becomes a closer call near the end of the controversy.

One kind of advocacy research includes the distortion of scholarship to suit pre-conceived advocacy objectives. That, clearly, is reprehensible for a scholar. So far as the written records of this case go, the author would be willing to defend his statements before his more prestigious and informed scholarly peers. Some points might be differently argued and supported than was done with the FCC, but no point was knowingly made in error and no conflicting evidence, such as cases in opposition, were concealed. With redrafting, many of the documents filed in this case might be acceptable toward a law review article on the theory of localism in TV service. To the

author, they are best described as examples of objective scholarship attached to, but not distorted by, an advocacy purpose. That seems, to him at least, to be a legitimate sort of advocacy research -- not too different, in fact, from other scholarly research which hopes to be objectively persuasive in favor of the scholar's findings.

On the other hand, there perhaps came a time in this proceeding when the author sacrificed some sort of scholarly virginity for pragmatic advocacy. When the case reached the point where a Petition to Deny had to be filed, the author expected to see that petition through to an FCC decision. He wanted the Commission to play its assigned role as ultimate, subject to judicial review, arbiter of the public interest. In fact, he hoped that by meeting all deadlines there could be a relatively speedy resolution of the problem by the Commission. He had negotiated in advance of filing the Petition; now he hoped that the Commission would do its job.

The problem was that the Commission, certainly more than anything else because of understaffing, failed to make a decision in a timely fashion. By not coming up with a timely decision, the Commission forced all parties, but particularly Terry and Teleco, into concessions that neither thought consistent with their interpretations of the law. An academic purist should, perhaps, have not made those compromises to his scholarly understanding of the law. Someone like the author, however, who recognized the process of broadcasting regulation as a political one, recognized the necessity -- if Bloomington objectives were going to be advanced -- of compromise. The compromise might not have been exactly the right academic thing to do.

Nor may it have been the right academic thing to continue to participate in a controversy when one has developed some doubts about some of its

dimensions. The author's after-the-fact judgement is that, objectively, he gained too much influence in this proceeding. Of course, he feels he used that power responsibly and toward good ends (Teleco, of course, may disagree), but is concerned about how others might use or abuse such power. Oddly, that power derives from the fact that a transfer application is susceptable to influence by Petitioners to Deny more than it is subject to control by the FCC. Congress has restricted the FCC's opinions in considering transfers to simply deciding whether or not the proposed purchaser basically meets the qualification to be a Commission licensee. The Commission can not decide whether another buyer would be better, or extract promises from a purchaser for service above and beyond minimal expectations. A transfer agreement, however, is a fragile one. All parties with an economic interest in it want rapid FCC approval and have economic incentives for it. As a consequence, they may be tempted to make compromises not in the public interest just to get pesky Petitioners to Deny out of the way. The author concluded that he was participating in a process subject to such abuse rather early in the proceeding, but did not withdraw at that time. That was, perhaps, an ethically questionable act or at least not an act of high principle. As partial redemption, then, the author would offer some proposals for reform.

First, the FCC should reinstitute what was called, under former FCC Chairman Richard Wiley, "Petition to Deny Day." Petition to Deny day was a monthly event at which the Commission acted upon, usually by denying, accumulated Petitions to Deny, usually those identified by the staff as relatively simple matters. The practice seems to have disappeared under the present FCC Chairman, Charles Ferris, giving the Commission no clear way to dismiss a non-meritorious Petition to Deny. The author is convinced of course that his petition was meritorious and that it could not have been

summarily dismissed by the FCC. Still, he would feel more comfortable if the Commission had a prompt way to dispose of petitions without merit and reduce pressure on purchasers to compromise with what they view as fundamental principle.

Second, much of the author's power here came from lenders' fees being paid by Teleco to the banks and insurance companies from which it was guaranteed loans. The author would urge the FCC to act to bar transfers calling for lenders fees paid before one year after submission of the transfer application to the FCC. For the most part, these fees seem like gravy for the financial institutions making loans of this size. Yet, payment of the fees encourages private settlement rather than waiting for an FCC decision. If the Commission acted to create a larger window for its own decisions on transfers, and to protect proposed assignees from some adverse financial consequences of delay, then the pressure to strike inappropriate bargains might be reduced. At the same time, the FCC should act more quickly on transfer applications. This, in the transfer division at least, seems to be purely a matter of resources and hence mainly a matter for Congress to sell. The author's acquaintances in the communications bar, while often critical of the quality of the FCC staff, generally give the transfer division good marks. The author, based on his experiences, would agree. It is simply that the staff is undermanned to deal with a number of controversial cases simultaneously.

Third, the author believes the FCC should clarify many of the areas that made for so much controversy in this case. The FCC cases defining a main studio for an independent TV station, for example, are clearly mixed. This could be clarified by the Commission through rulemaking proceedings so that broadcasters and citizens of communities alike could know better what the Commission and the law require. Similarly, the

Commission's policies on numbers of community leaders to interview, and on handling of interview data, are not clear when stations have dual ID's, as was true of WTTV. This problem might be handled by an amendment to the ascertainment primer, without having to go through the rulemaking proceeding since it would just clarify existing policy. Additionally, the Commission, though its Office of Plans and Policies, should conduct or contract for research testing the assumptions of the ascertainment process. It clearly seems time to try and determine empirically whether ascertainment has any real relationship to better broadcast performance. Often it seemed to the author as if he and Teleco were arguing over the most trivial details: for example, were 77 rather than 100 Bloomington community leader interviews required by the FCC. The author's research training and journalism experience both suggest that the Commission's standards bear no automatic relationship to good programming. Frankly, the author suspects the relationship might be negative if a broadcaster slaveishly programmed on the basis of ascertainment proceeduras as flawed as the present standards. The controversy suggests to the author a fundamental need to rethink the relationship between ascertainment and programming in the public interest, and to perhaps fundamentally reform or abolish it. Perhaps the academic thing to do would have been to raise these doubts about ascertainment in the documents filed with the WTTV case, but to simultaneously argue that Teleco did not do its ascertainment properly. If that was the proper thing to do, then the author fell down in his behavior at that point in the case.

In conclusion, it should be noted that this was an unusual controversy. There was much argument in the case over whether a single person, not representing a group, and probably unable to prove any special injury should have standing

to delay a $26,450,000 business deal. Although some reforms of the transfer process have been suggested, the author would continue to support liberal grants of standing as a matter of sound public policy, provided that the FCC can speed up its processing of applications and handling of non-meritorious Petitions to Deny.

This kind of intervention is not likely to be common. Persons with the author's knowledge of broadcasting law are not found in every community and should be encouraged to participate if they are willing to give their time and money. They usually will not proceed without community support for, as the author discovered, community support is a comforting thing. It may often be the case, as here, that supporters can not come into the open to participate in controversy. Requiring groups to file elaborate showings about their membership, financial support, and the like with Petitions to Deny, as the NAB has proposed, would have a chilling effect on their participation in policy making and enforcement. If the system can simply be made to function more smoothly, something the author believes is possible, then active intervention in transfer cases may be the only way to improve the quality of American broadcasters. Given the FCC's presently narrow opinions when presented with a transfer case, many fundamental Commission policies articulated in the comparative policies toward new stations (e.g., integration of ownership with management and localness) can be undercut by relatively unregulated subsequent sales. The transfer process is the way, in the future, that the face of broadcasting will change, as there are few new broadcast stations to start in a crowded spectrum. If we are to get better broadcasters, it will be through better transfers and a key part to that may be to encourage, not suppress, involvement of the public, and knowledgable academics, in the transfer process.